

TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION TO CIVIL SERVICE RULES AND REGULATIONS

1.1	Definitions	5
1.2	Objectives of Rules and Regulations	5
1.3	Applicability of Rules and Regulations	5
1.4	Communication of Rules and Regulations	5
1.5	Amending or Changing Rules and Regulations	6
1.6	Adoption of Executive and Administrative Orders ..	6
1.7	Human Resources Policy Manual	6
1.8	Effective Date	6

CHAPTER 2: EMPLOYMENT PRACTICES

2.1	Equal Employment Opportunity	7
2.2	Probationary and Work Test Periods	8
2.3	Performance Evaluation	10
2.4	Outside Employment	12
2.5	Nepotism	12
2.6	Resignation	12
2.7	Dismissal	12
2.8	Layoff	13
2.9	Reemployment	15
2.10	Employee Records	16
2.11	Residency	16

CHAPTER 3: SELECTION AND PROMOTIONAL PRACTICES

3.1	Recruitment	17
3.2	Character of Applicant Assessment	17

3.3	Basis for Selection	18
3.4	Veteran's Consideration	18
3.5	Promotional Policy	18

CHAPTER 4: CLASSIFICATION AND COMPENSATION

4.1	Establishment and Maintenance	20
4.2	General Pay Provisions	20
4.3	Relationship of Performance Evaluation to Merit Pay Increases and Promotions	21
4.4	Effect of Leave Without Pay on Merit Increases	21
4.5	Promotion, Reclassification, Demotion, Voluntary Reduction in Grade or Transfer	21
4.6	Special Pay Provisions	22
4.7	Compensation for Working an Official Holiday	24
4.8	Shift Differential	25
4.9	Working in a Higher Classification	25
4.10	Original Appointment	26
4.11	Call Back Pay	26
4.12	Separation Pay	26

CHAPTER 5: WORK HOURS, ATTENDANCE AND LEAVE

5.1	Work Hours	27
5.2	Absenteeism and Tardiness	27
5.3	Absent Without Leave (AWOL)	27
5.4	Eligibility to Observe and Accrue Leave	27
5.5	Vacation	28
5.6	Sick Leave	29
5.7	Holidays	31

5.8	Injury-on-Duty (IOD) Leave	32
5.9	Military Leave	34
5.10	Jury Duty	34
5.11	Bereavement Leave	35
5.12	Leave Without Pay	35
5.13	Administrative Leave	36
5.14	Maternity Leave	36
5.15	Family and Medical Leave Act of 1993	36
5.16	Parent Teacher Conferences	36
 CHAPTER 6: EMPLOYEE CONDUCT, DISCIPLINARY ACTION, AND GRIEVANCE PROCEDURES		
6.1	General Employee Conduct	37
6.2	Political Activity	37
6.3	Corrective Action (Reprimand)	38
6.4	Absenteeism and Tardiness	38
6.5	Disciplinary Action	39
6.6	Disciplinary and Grievance Appeal Procedures	42
6.7	Employee Grievance Procedures.....	42
 CHAPTER 7: DEFINITIONS		
APPENDIX 1: FINANCIAL AND OTHER DISCLOSURES BY CERTAIN METROPOLITAN GOVERNMENT EMPLOYEES AND OFFICIALS.....		51
APPENDIX 2: ETHICS, CONFLICTS OF INTEREST, AND ACCEPTANCE OF GIFTS ON THE PART OF EMPLOYEES OF METROPOLITAN GOVERNMENT.....		55
APPENDIX 3: THE FAMILY AND MEDICAL LEAVE ACT OF 1993		59

APPENDIX 4: THE TENNESSEE MATERNITY LEAVE LAW	64
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CHAPTER ONE

INTRODUCTION TO CIVIL SERVICE RULES AND REGULATIONS

1.1 DEFINITIONS

As used throughout these rules **"Director"** shall mean Director of Health, **"Board"** shall mean Metropolitan Board of Health acting as the Civil Service Board, **"Department"** shall mean Metro Public Health Department, and **"designee"** shall be the staff member assigned to complete certain administrative functions on behalf of the Director. Where the timeframe is referenced as **"workdays"** or **"calendar days"** it does not count the first day the timeframe begins, but does count the last day (only full workdays count).

1.2 OBJECTIVES OF RULES AND REGULATIONS

The purpose of these rules is to bring into the service of the Department a high degree of understanding, cooperation, efficiency and unity. These rules provide a uniform human resource program for all employees, with all the benefits such a program ensures. The fundamental objectives to be achieved by these rules are declared to be:

- A. To promote and increase efficiency and economy in the Department.
- B. To provide equal employment opportunities to all applicants and employees.
- C. To develop a program of recruitment, advancement and tenure which will make employment with the Department attractive as a career and encourage each employee to render his/her best services.
- D. To establish a program based on merit for the hiring and promotion of employees and to provide promotional opportunities whenever possible to establish and promote high morale and enhance working conditions among Department employees by providing a uniform human resource policy and opportunity for advancement.

1.3 APPLICABILITY OF RULES AND REGULATIONS

These rules shall apply to all Civil Service employees of the Department who work a regular work week of at least twenty (20) hours per week in a budgeted payroll position.

1.4 COMMUNICATION OF RULES AND REGULATIONS

An electronic or hard copy of the rules and regulations will be given to all Department employees and to all new hires at the beginning of their probationary period. Each employee is to sign a statement that he/she has received the copy. An up-to-date copy of the rules will be maintained in the department. This copy will be available for reference by employees during normal working hours. Any changes to the rules will be posted on the department bulletin boards and Intranet. Rule changes will be distributed to all Department employees.

1.5 AMENDING OR CHANGING RULES AND REGULATIONS

The Human Resources Director is responsible for recommending changes of these rules to the Board. Anyone may recommend changes to the Human Resources Director. In accordance with the provisions of the Metropolitan Charter, it shall be the authority of the Board to review and, as necessary, amend or modify these rules after a public hearing. See Policy 1.5 I Civil Service Rules and Regulations Revision.

1.6 ADOPTION OF EXECUTIVE AND ADMINISTRATIVE ORDERS

The Board may determine that certain Executive Orders issued by the Mayor and Administrative Orders issued by Metropolitan Government Departments should be adopted and made a part of these Civil Service Rules and Regulations. Adoption by the Board of such Executive and Administrative Orders will amend the Civil Service Rules and Regulations and such Orders will become a part of these Civil Service Rules and Regulations.

1.7 HUMAN RESOURCES POLICY MANUAL

A manual will be maintained by the Human Resources Division containing all policies referenced by the rules and/or approved by the Board. A copy of this manual will be provided to all divisions, placed on the Intranet and a copy will be available for reference in the Human Resources Division.

1.8 EFFECTIVE DATE

The effective date of these rules and regulations shall be July 1, 2004. On this date all prior Civil Service Rules and Regulations are superseded by these rules. However, no part of these rules or regulations shall be applied retroactively to the effective date.

CHAPTER TWO

EMPLOYMENT PRACTICES

2.1 EQUAL EMPLOYMENT OPPORTUNITY

A. POLICY

It is the policy of the Board that all persons shall have equal employment opportunities regardless of race, color, national origin, gender, age, religion or disability. Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline or any other employment practices because of non-merit factors shall be prohibited. Harassment based on race, gender, color, religion, age, national origin or disability is a form of discrimination and will not be condoned.

The Civil Service Rules and Human Resource operations shall be administered in such manner as to comply fully with all Equal Employment Opportunity laws and regulations.

Any employee or applicant who feels that he/she has not been afforded equal opportunity for any employment action may file a complaint in accordance with the discrimination complaint procedure. See Policy 2.1 I Discrimination Guidelines and Policy 2.1 II Reasonable Accommodation.

B. COMPLAINT PROCEDURE

A complaint of discrimination as outlined in the Discrimination Guidelines, including a complaint of sexual harassment, may be filed according to the steps defined below. A complaint should initially be filed within twenty (20) workdays of the occurrence or reasonable knowledge of the alleged discrimination. If it is a continuing problem, the complainant needs to state when it began and the progression to the time of the complaint. A complaint may be filed by a current employee or by an applicant and by an individual or a group of people. Any complainant shall have the right to have reasonable representation of his/her choosing with him/her at all stages of the complaint procedure. The complaint procedure will maintain confidentiality, to the degree allowed by law. Reprisal or retaliation against the complainant or witnesses participating in the investigation is prohibited and could be grounds for disciplinary action.

1. Although employees are encouraged to try to settle problems on an informal basis, any employee who feels that he/she has been subjected to discrimination may file a complaint with his/her supervisor. The supervisor shall try to remedy any actual or perceived problem without the necessity of additional formal procedures. The supervisor shall inform the employee of his/her decision within ten (10) workdays. If the complaint is not resolved at this level, the employee may proceed to Step 2 as long as he/she does so within ten (10) workdays of receiving the supervisor's decision. If the supervisor is the offending party, or if the employee feels that the supervisor will not or cannot objectively handle the complaint, the employee should file the complaint in accordance with Step 2.

2. A complaint of discrimination may be filed, in writing, with the Director or designee. (If the Director is the alleged offending party, the individual should file the complaint with the EEO Coordinator of the Board as set out in Step 3.) The Director or designee, after thorough investigation, should take the necessary steps to correct any problem found to exist. Such correction may include disciplinary action against an offending employee, especially if the charge involves harassment. The departmental investigation shall be completed within twenty (20) workdays, with an extension of an additional twenty (20) workdays if needed. The Director shall notify the complaining party of his/her decision within ten (10) workdays following the conclusion of the investigation. If the Director feels that the charges warrant a third party investigation, or if the charges involve rules or policies which are beyond his/her scope of authority, he/she may refer the complaint to Step 3.
3. If the individual feels that the complaint has not been remedied by the Director, the complainant should file a written complaint with the EEO Coordinator. The written complaint should be filed within ten (10) workdays from the date of the letter sent by the Director as set out in Step 2. Upon receipt of a written complaint or referral by the Director, the EEO Coordinator will conduct an investigation within twenty (20) workdays, with an extension of up to twenty (20) additional workdays if needed. He/she will make a full report to the complainant and the Director which shall include findings as to the truth of the allegations of discrimination. As a result of the investigation and the findings of the EEO Coordinator, the Director shall then review his/her previous decision to determine if the appropriate action was taken. Within ten (10) workdays after receipt of the final report, the Director shall send a written notice to the complaining party of action being taken.
4. Right of Appeal - Any complaining party may present his/her complaint of discrimination to the Board, for review, after the EEO Coordinator has investigated the matter, if the individual feels the Director has failed to adequately address the problem cited. Any request to present a complaint to the Board must be made, in writing, within ten (10) workdays of the final determination by the Director as set out in Step 3.
5. If, for some reason, the complaining party is not comfortable with this complaint procedure, it should be recognized that any individual has the right to proceed directly to the Equal Employment Opportunity Commission, the Tennessee Human Rights Commission, or Human Relations to file a complaint of discrimination.

2.2 PROBATIONARY AND WORK TEST PERIODS

A. PURPOSE OF PROBATIONARY PERIOD

Every employee appointed to a Civil Service position in the service of the Department must successfully complete a six (6) month probationary period of satisfactory performance before he/she is considered a Civil Service employee. The probationary period shall begin on the first scheduled day of work. During the probationary period, the employee's performance shall be closely observed and evaluated by his/her supervisor; and, in the process, a

determination of the employee's suitability for the position shall be made. Only those employees whose performance during the probationary period meets an acceptable standard shall be retained and granted Civil Service status. Prior to the conclusion of the probationary period a decision must be made and the employee notified. If, at the completion of the six (6) month probationary period, the employee has not been notified of his/her failure to meet acceptable standards, or notified of an extension of the probationary period granted in accordance with this section, the employee shall automatically attain Civil Service status in his/her position.

B. EXTENSION OF PROBATIONARY PERIOD

If a probationary employee is granted unpaid leave or is injured in line of duty during his/her probationary period, the period shall be automatically extended by an amount of time equal to the work time missed due to the unpaid leave or injury leave. Unless it occurs in connection with an unpaid leave and/or injury leave, an extension of the probationary period beyond six (6) months shall not normally be granted. However, upon the written request of the employee's supervisor which clearly specifies the work-related reasons, the Director may grant, in unusual or unique situations, an extension of up to one (1) additional month. Any extension in excess of one (1) month shall require approval of the Board; but, in no event shall any probationary period be extended more than an additional six (6) months from the date originally established as the completion date.

C. DISMISSAL OF PROBATIONARY EMPLOYEES

A probationary employee may be dismissed because of unsatisfactory job performance anytime during the probationary period. This separation does not require advance notice and is not subject to appeal or hearing (unless the reason for termination adversely reflects upon the employee's honesty or moral character, in which case he/she may be granted a hearing before the Director to present his/her side of the incident). However, this does not eliminate the supervisor's responsibility to properly evaluate the employee's work performance, to provide the employee with reasonable directions on acceptable standards of work and to properly document the reasons for recommending dismissal of a probationary employee. Dismissals which are handled in accordance with this section can not be appealed to the Board.

D. PURPOSE OF THE WORK TEST PERIOD

Any employee who is promoted to a higher classification shall be required to successfully complete a work test period of satisfactory performance on the job before he/she is allowed to remain in the job classification. The work test period shall be for six (6) months and shall begin on the effective date of the promotion. During the work test period the employee's performance shall be closely observed and periodically evaluated by his/her supervisor, and, in the process, a determination of the employee's suitability for the position shall be made. At the conclusion of the work test period a decision must be made and the employee notified. If the employee is not notified of his/her failure to meet the acceptable standards, or notified of an extension of the work test period granted in accordance with this section, the employee shall automatically remain in the job classification.

E. EXTENSION OF WORK TEST PERIOD

Unless it occurs in connection with an unpaid leave, injury leave, and/or sick leave in excess of ten (10) consecutive workdays, an extension of the work test period beyond six (6) months shall not normally be granted. However, upon the written request of the employee's supervisor which clearly specifies the work-related reasons, the Director may grant, in unusual or unique situations, an extension of up to one (1) additional month. Any extension in excess of one (1) month shall require approval of the Board, but in no event shall any work test period be extended more than an additional six (6) months from the date originally established as the completion date.

F. REDUCTION OF WORK TEST EMPLOYEES

An employee in a work test period may be reduced to his/her former classification or the first available comparable classification at any time during this period because of unsatisfactory job performance, conduct adversely affecting the performance of others, physical or mental inability to perform the job which cannot be reasonably accommodated, or because of violation of a Civil Service Rule. Reduction during work test must be preceded by adequate counseling of the employee. The job-related reasons for such decision shall be documented by the supervisor and explained to the employee; however, nothing in this section shall be meant to prevent a supervisor from taking corrective and/or disciplinary action during the work test period in accordance with these rules when such is appropriate.

2.3. PERFORMANCE EVALUATION

A. POLICY

In accordance with the Metro Charter, each employee's job performance shall be evaluated on at least an annual basis. Additional evaluations may be done when necessary. The requirements of the position constitute the standards of performance and the basis upon which supervisors will rate the performance of employees. The standard of performance against which observed performance is compared shall be the performance which may be expected after a reasonable period of training of a fully qualified, competent and acceptable employee.

B. PURPOSE

Performance evaluations are used to give employees feedback on their job performance, to help them improve future performance and to document performance for the following purposes:

1. To complete probation or work test.
2. To determine whether a merit salary increase will be granted and the amount of the increase.
3. To determine eligibility for promotions and advancement.
4. As an aid in determining layoff actions.
5. To determine reemployment eligibility.
6. To facilitate other personnel decisions which may be appropriately influenced by employee performance.

C. TYPES AND FREQUENCY OF EVALUATIONS

1. Probationary/Work Test Evaluation

Each employee serving a probationary or work test period shall have his/her performance evaluated by his/her immediate supervisor periodically during this time, which shall be the basis for determining his/her suitability for the position and for attaining Civil Service status for the probationary employee.

2. Annual Evaluation

Each employee will have his/her performance evaluated on at least an annual basis. This evaluation shall be completed even if there is no salary adjustment possible.

3. Unscheduled Evaluations

Any supervisor may complete a performance evaluation on a subordinate employee whenever such is deemed useful or necessary. Any time an employee's overall level of performance or specific performance in critical job areas reaches a level which is below satisfactory standards, the supervisor shall issue a written warning to the employee. The warning will include a statement concerning how the employee is failing to measure up to the requirements of the position. The warning will also include a statement as to what the employee needs to do and/or how he/she can improve so that his/her performance can reach a satisfactory level.

D. EMPLOYEE APPEALS

1. Grounds for Appeal

An employee may appeal a performance evaluation based on the following grounds:

- a) The procedures for completing the evaluation have not been properly followed.
- b) Explanation was not given for below standard ratings.
- c) The performance evaluation prevents the employees from receiving a merit salary increase. In such a case, the employee should be prepared to substantiate the ratings he/she believes to be appropriate.

2. Appeal Procedure

An employee must appeal the performance evaluation within fifteen (15) workdays of the date of the performance evaluation review. An appeal filed on the above grounds begins with the rater. The employee should discuss his/her concerns with the rater and request adjustment to the appropriate evaluation ratings. If the rater believes the initial ratings were correct and does not believe that a change is needed, the employee may request that the reviewer consider the desired changes. If the reviewer upholds the original rating, the employee can appeal to the Director who has the final decision. If changes are made at any time in the process, they shall be in writing and initialed by all parties involved with a copy given to the employee. All aspects of the appeal are handled within the department, as the Board members would have no effective way of accurately assessing the employee's performance. The employee may ask the Human Resources Director to review the issues to determine if a major policy or procedural violation exists.

3. Appeal Limitations

An employee must not appeal an evaluation simply because he/she disagrees with particular ratings unless such ratings result in the grounds listed above. Employees may indicate agreement or disagreement with ratings on the evaluation form when it is discussed. If an employee feels that this is insufficient he/she may attach a separate statement to the evaluation form to be maintained in the employee's personnel file. Such rebuttal should be signed by the rater, reviewer and Director.

2.4 OUTSIDE EMPLOYMENT

An employee may engage in employment with another organization as long as he/she satisfactorily performs his/her job responsibilities with the Department. Outside employment is any work paid in addition to the Metro salary, including self-employment. Outside employment must be reported in advance, in writing (form available in Human Resources or on the Intranet), to the Human Resources Division and must be in accordance with the following guidelines:

- A.** It must not interfere with the employee's duties.
- B.** It shall not involve a conflict of interest or the appearance of or potential for a conflict of interest. See Appendix 2 Ethics, Conflicts of Interest, and Acceptance of Gifts.
- C.** No employee shall use the facilities, equipment, personnel, or supplies of the Department or its agencies for other than officially approved activities, except to the extent that they are lawfully available to the general public.

The Director or designee shall approve or disapprove an employee's outside employment in accordance with the guidelines above.

2.5 NEPOTISM

Within the Department, no employees who are relatives should be placed within the same direct line of supervision whereby one relative is responsible for supervising the job performance or work activities of another relative. This in no way restricts the work assignment of employees during emergency situations which affect the health, safety or welfare of the public. A relative is defined as a member of the immediate or extended family.

2.6 RESIGNATION

If a Civil Service employee takes the initiative to voluntarily terminate his/her employment by resignation, he/she is expected to give his/her supervisor a minimum of two (2) weeks' written notice. Failure to provide this written notice shall be noted in the employee's human resource record and shall become a factor in his/her being considered for future employment.

2.7 DISMISSAL

Any employee of the Department may be dismissed for unsatisfactory job performance, violation of Civil Service or departmental rules and regulations, physical or mental inability to perform assigned duties upon reasonable accommodation or other cause covered in Section 6.5.

Civil Service employees who are dismissed due to inability to perform assigned duties shall be given at least two (2) weeks' notice prior to such action being taken. Dismissal due to rules violation or other cause involving disciplinary action does not require the two (2) week notice; however, such action must be taken in accordance with the guidelines in Section 6.5. Pay in lieu of notice may be substituted on an equal basis in all cases where notice is required.

2.8 LAYOFF

It is the policy of the Department that care and discretion be exercised in the adding of employees to the payroll, and that every reasonable effort be made to avoid the layoff of an employee. It is recognized, however, that budget reductions and/or reorganizations may periodically become necessary and may result in a layoff. Prior to the effective date of the layoff, a reasonable attempt will be made to transfer employees to another vacant position within the Department or another department within Metropolitan Government. If an employee is offered and accepts or declines a position in the same classification or if he/she accepts another position even at a lower grade prior to the effective date of the layoff, the employee relinquishes his/her recall rights. The following guidelines shall be followed in the event a layoff should occur:

A. Seniority

No Civil Service employee will be subject to layoff until all non- Civil Service and part-time employees in the same classification and within the same division or program have been laid off. Civil Service employees include those employees who have successfully completed a probationary period of six (6) months upon initially being hired in a Civil Service position. Non - Civil Service employees as applied to this section shall include: 1) those who have been appointed to a budgeted position but have not yet completed a probationary period upon initially being hired, or 2) emergency, seasonal and/or temporary employees. In determining the order of layoff, service with Metro Government shall be the predominant factors. Seniority shall be calculated as the total years and months of continuous employment with Metropolitan Government from an individual's date of hire through the date of layoff, less any periods of layoff of any duration and/or any period of leave without pay in excess of twenty (20) cumulative work days in a calendar year. If seniority with the Metropolitan Government between two (2) employees is the same, then performance evaluations, prior disciplinary actions, special training and attendance will be the deciding factors. See Policy 2.8 A I Seniority Provision Waiver.

B. Layoff Plan Approval

After a determination is made by the Director as to specific individuals who are to be laid off or have their salary reduced, he/she shall submit a list of employees being affected to the Board for final approval. This list shall include both Civil Service and non - Civil Service employees. The Board shall approve the proposed action to be taken by the Director or disapprove it as to each employee affected. Approval or disapproval must be made within fourteen (14) calendar days after the action was presented. If the Board fails

to act in the time allotted, the action of the Director shall be deemed to be approved.

C. Notification and Appeal

Any employee laid off under these procedures shall be given a minimum of ten (10) workdays notice prior to the action becoming effective. In addition, the affected employee shall receive an additional ten (10) workdays pay at his/her regular rate plus pay for all accrued but unused vacation leave and/or compensatory time as provided under these rules. After a layoff has been approved by the Board, the Director shall immediately notify the affected employee, in writing, of the action to be taken and the effective date of the layoff. The letter shall also advise the employee that the employee may request the Board to reconsider the action taken. The request for reconsideration must be made within fourteen (14) calendar days from the date of the letter from the Director. Reconsideration by the Board shall only be to consider facts that would show that the procedures set out in this section have not been followed. The burden will be on the employee to show any irregularity in the application of this rule. Reconsideration by the Board shall not alter nor affect an already established date of layoff unless the Board alters its original decision.

D. Recall - In each layoff situation a recall list shall be established for each classification involved. Persons laid off shall be listed in the order of their relative seniority. If seniority between employees is the same, then performance evaluations, prior disciplinary actions, special training and attendance will be the deciding factors. Employees shall be eligible for recall for a period of three (3) years from the effective date of their layoff. The employee's eligibility for recall may be extended beyond the three (3) year period if deemed appropriate by the Board.

Prior to a recall offer, a position may be announced (posted) within the department and existing staff may be reassigned based upon their ability to fulfill the needs of the division. If a vacancy in an affected classification should exist within the three (3) year period following a layoff, the former employee of the Department with the most seniority for that classification shall be recalled to a position appropriate to their skill, education, and experience level. If recalled to a similar classification, the employee's name will be removed from the list. If recalled to a lower position, the employee's name shall remain on the recall list for the three (3) year period. Any employee who is offered and does not return within fifteen (15) workdays to his/her former classification shall have his/her name removed from the recall list and shall not be eligible for further consideration except as an applicant from outside the Department.

Former employees who were laid off shall be eligible for recall in any vacancy of the same classification as was held at the time of layoff. Provided the employee still meets the minimum requirements for the classification, he/she shall be offered employment prior to any such vacancy being filled by a new applicant for a period of three (3) years following his/her date of layoff. Any former employee who was laid off and who is rehired within the three (3) year time limit shall be credited with all prior unused sick leave and prior continuous service immediately; however, the employee shall be required to

successfully complete a probationary period if the period of layoff has exceeded six (6) months. If rehired into the same classification as was previously held, the employee shall be placed at a position in the salary range at least as high as was held on the date of layoff and shall be eligible for a merit increase if applicable.

2.9 REEMPLOYMENT

Former employees of the Department, who resigned in good standing and whose previous performance evaluations were satisfactory, shall be eligible for reemployment, provided they meet all of the requirements for employment.

- A.** Prior to reemployment of other candidates, consideration will be given to such former employees of the Department and other Metropolitan Departments who are receiving disability pensions, but who are physically fit and qualified to perform the duties required of the position available. Other than the consideration to be given disability pensioners, no special preference nor rights shall accrue to such former employees in the selection process over any other qualified applicant. Any such former employee who is rehired shall be considered a new employee for purposes of seniority and shall be required to successfully complete a probationary period.
- B.** Former employees whose employment was terminated due to physical or psychological impairment who are later rehired shall be treated the same as is stipulated in Section 2.8D Layoff Recall for purposes of unused leave, service credit and salary, provided that up until the time of rehire, the employee has been receiving a disability pension from the Metropolitan Government.
- C.** Any former Metropolitan Government employee that is re-employed shall be credited with prior accumulated sick leave and service time upon completion of the probationary period for the purpose of vacation leave accrual only. It shall be the responsibility of the employee to request written documentation regarding prior accumulated sick leave and service time from another Metropolitan Government Department.

2.10 EMPLOYEE RECORDS

A personnel file shall be maintained by the Human Resources Division on each employee. Each employee's file shall contain the following items:

- A.** Application for employment and other pre-employment data.
- B.** Record of initial hire and any subsequent transfers, promotions or other changes in position, classification, pay rate or pay grade.
- C.** Record of performance evaluation and disciplinary action.
- D.** Such other documents as may be specified in these rules and regulations or as may be required by the or by established practice and procedure.

This file shall be the official personnel file on individual employees maintained by the Department. Employees shall have the right to view their file in the Human Resources Division during regular business hours and upon reasonable notice being given. Employees will only be allowed to review their file in the presence of a Human Resources staff member. Employees shall not remove or add any information to the documents already in their file. Any certificates, letters of appreciation, or other documents should be presented to a Human Resources employee for placement in the employee's file.

Any person, company, business or agency, excluding persons or agencies of the Metropolitan Government, seeking information in regard to an employee (except for oral verification of employment dates and job title) shall make such request in writing, and the person, company, business or agency shall sign the request. The written request must state as specifically as possible the information being sought. The written request for information in regard to an employee shall become part of the employee's file. Requests for information which do not conform to these guidelines will be denied. Employees will be notified when someone other than supervisory personnel will be reviewing their file.

2.11 RESIDENCY

It shall be required and the responsibility of the employee to notify the Human Resources Division of his/her current address. See Metro Substitute Ordinance #S094-1078.

CHAPTER THREE

SELECTION AND PROMOTIONAL PRACTICES

3.1 RECRUITMENT

The Department shall make every reasonable effort to attract qualified applicants for employment. When it is determined that the number of current eligible applicants is insufficient for the filling of current or expected vacancies, public advertisements and/or announcements of the vacancies shall be made. The announcements shall be made in such a manner that qualified candidates shall have an opportunity to apply. It may include: newspaper advertisements, Internet, Intranet, announcements distributed to applicable schools, colleges and training centers and the posting of internal announcements on Department bulletin boards.

3.2 CHARACTER OF APPLICANT ASSESSMENT

The tools and techniques which shall be used to ascertain the fitness of each applicant shall be administered consistently for each classification where a vacancy exists. All qualified candidates for a given vacancy shall be assessed and reviewed using the same techniques or tools. These may include but shall not necessarily be limited to the following:

A. Written Examination

Which shall consist of job-related written tests in such areas as mathematics, grammar, vocabulary, reasoning, logic, reading, comprehension, writing skills and general aptitudes. To protect the integrity and purpose of such tests, no applicant shall be permitted to take the same written examination more than once in any thirty (30) day period, or twice in any one hundred and eighty (180) calendar days.

B. Oral Examination

Which may be used in lieu of, or to supplement, the written examination and shall be used to obtain information regarding the job-related interests, experiences, interpreting skills, knowledge and abilities not readily obtained in a written examination. To protect the integrity and purpose of such examination, no applicant shall be permitted to take the same language assessment more than once in any one hundred and eighty (180) day period. See Policy 3.2 B I Interpreter / Language Skills Assessment, Employment, and Competency Development.

C. Performance Examination

Which may consist of a typing and/or stenography speed and accuracy test, or tests measuring manual dexterity, physical agility and coordination or other job-related physical skill.

D. Personal Interview

Which may be conducted by an interviewer in the Human Resources Division and/or those supervisory employees to whom the position reports. These interviews shall have the purpose of appraising and documenting applicant characteristics such as job and salary expectations, career goals, job

knowledge, skills, experience and general suitability for the position and any other pertinent data.

E. Reference Checks

Which shall consist of oral and written verification of the applicant's credentials, character and background, previous work experience and performance evaluations from former employers.

F. Physical Examination

Which shall be mandatory for all new hires for budgeted payroll positions and shall consist of a post-offer medical examination concerning the applicant's physical ability to perform the job with or without reasonable accommodation. It shall be conducted by a physician designated by the Director. The cost of such examination shall be borne by the Department.

G. Background checks, which may include verification of the applicant's criminal history, education, licensure if applicable, and other appropriate investigations by an independent agency. See Policy 3.2 G I Background Check.

3.3 BASIS FOR SELECTION

The basis for the selection and appointment of any applicant for any position shall be the relative appropriateness of his/her job-related credentials in comparison to all other applicants for the same position. For each vacancy, the available applicant whose total credentials best meet the job qualifications and requirements shall be selected for employment.

3.4 VETERAN'S CONSIDERATION

Each qualified applicant for employment who has been honorably discharged from the Armed Forces of the United States shall receive extra consideration for employment over other similarly qualified applicants who do not qualify as veterans. A copy of the DD214 form must be submitted verifying the period of service and type of discharge.

3.5 PROMOTIONAL POLICY

It is the policy of Department to provide promotional opportunities whenever possible to qualified employees. Employees are encouraged to take advantage of these opportunities by continuing to strengthen their job-related qualifications and abilities through formal education, training, self-study and by establishing a record of reliability and quality job performance. Employees shall be assured of full and fair consideration through the promotional selection process contained in these rules, policies and procedures.

A. ANNOUNCEMENT

Budgeted vacancies which would provide promotional opportunities shall be announced and advertised in such a manner that all eligible and qualified employees within the department shall have an opportunity to apply.

B. ELIGIBILITY

Eligibility to apply for a promotional opportunity shall be open to any Civil Service employee provided the employee meets the minimum requirement for the classification and has performance evaluations of meets requirements or better for the past twenty-four (24) months. If the employee has been employed for less than twenty-four (24) months, all previous evaluations must reflect meets requirements or better performance. Employees who have not completed their probationary period shall be considered eligible for a promotional opportunity when there is no qualified applicant among Civil Service employees. Each eligible employee who makes written application for a posted vacancy shall be personally contacted by the hiring supervisor and shall receive full consideration for promotion.

CHAPTER FOUR

CLASSIFICATION AND COMPENSATION

4.1 ESTABLISHMENT AND MAINTENANCE

The classification and pay plan for the Department employees shall be established in accordance with procedures in the Metro Charter. The Human Resources Manager shall, subject to the provisions of the Charter, be responsible for the maintenance and administration of the classification and pay plan. The director shall do the following in regard to the pay plan:

- A.** Classification titles shall be assigned to every position in the department.
- B.** Job descriptions of every classification shall be prepared and updated as needed. A copy of each job description shall be maintained by the Human Resources Division and made available for the employee's inspection during work hours with reasonable notice.
- C.** Each position shall be evaluated and assigned to a proper classification in accordance with the established classification plan, position audit, or reclassification policy as approved by the Board.
- D.** Records shall be maintained reflecting such data and information as is necessary for the administration and maintenance of the classification and pay plan.
- E.** Classification and pay review studies based on job functions, responsibilities, and non-wage benefits shall be conducted periodically and used for comparison and updating purposes. Such studies should include periodic wage and salary surveys. Priorities for study shall be established by the Director, Human Resources Manager, and other management officials and may consider input from employees. Revisions shall be recommended to the Board for approval.

4.2 GENERAL PAY PROVISIONS

Employees shall be paid in accordance with the established pay plan, Civil Service Rules and policies. No employee shall be paid at a rate less than the minimum rate nor more than the maximum for a classification as provided for in the pay plan, except as provided for in the following rules and policies: 1) Section 4.5 B Demotion and Voluntary Reduction in Grade and 2) Policy 4.2 I Redlining Employee Salary.

Part time employees may be paid by the hour or paid a proportional amount of the pay plan rate according to the time worked. The Board may adopt special pay provisions as needed to cover unusual situations, such as irregular part-time, seasonal, temporary or grant-funded arrangements.

The salary range for all classifications will consist of a minimum, control point (area market rate), and maximum salary. Employees may be compensated anywhere in the range commensurate with education, experience,

performance level, skills, and abilities. Also, see Section 4.10 Original Appointment.

4.3 RELATIONSHIP OF PERFORMANCE EVALUATION TO MERIT PAY INCREASES AND PROMOTIONS

Performance evaluations will be conducted on all eligible employees on an annual basis. To be eligible for a merit increase in conjunction with a performance evaluation an employee must have been hired by October 1st of the previous year. The performance evaluation process will be conducted July through September of each year and merit increases may be granted effective October 1st. The annual evaluation shall be used in such a way as to determine whether the employee has qualified himself/herself for a pay increase as provided by the pay plan, available funds, and Director. The pay plan may provide for merit pay increases to employees as a reward for ability and efficiency and to compensate for their increased value to the Department.

Increases will be granted only upon completion of a performance evaluation that is rated meets requirement or better. Employees whose performance is below acceptable standards will not receive a merit increase and will be placed on a Performance Improvement Plan (PIP). In this case the employee will be reevaluated within three (3) months. If by the time of reevaluation the employee's performance has not improved to a level considered to be satisfactory, the supervisor in conjunction with the Bureau Director will consult with the Director on the performance issues and determine if disciplinary action is warranted.

In order to qualify for a promotion, an employee's previous evaluations must reflect a level of past performance which has been rated meets requirements or better for the past twenty-four (24) months. If the employee has been employed for less than twenty-four (24) months, all previous evaluations must reflect meets requirements or better performance.

4.4 EFFECT OF LEAVE WITHOUT PAY ON MERIT INCREASES

An employee must be in a paid status for at least nine (9) months during the evaluation period to be eligible for a merit increase.

4.5 PROMOTION, RECLASSIFICATION, DEMOTION, VOLUNTARY REDUCTION IN GRADE OR TRANSFER

A. PROMOTION AND RECLASSIFICATION

When an employee is promoted, the employee's rate of pay will be increased to reflect the additional duties and responsibilities of the new classification. Employees who are promoted will receive a seven and one-half percent (7.5 %) increase in pay or the minimum salary of the new classification whichever is greater. An employee may be promoted to a supervisory position and be compensated at a lesser rate than a direct subordinate. This is because the maximum salary in the subordinate's classification overlaps the minimum salary in the supervisor's classification. When this situation occurs it shall not be grounds to request a salary adjustment for the supervising employee.

Reclassifications normally do not result in an increase in pay unless the nature of the reclassification and any recent changes in duties warrant an increase.

B. DEMOTION AND VOLUNTARY REDUCTION IN GRADE

When an employee in one classification is demoted for cause to another classification, his/her rate of pay shall be reduced within the range of the new classification as recommended by the Director.

The rate of pay for a voluntary reduction in grade will normally be the employee's current salary provided it falls within the salary range of the lower classification. An employee may be redlined at his/her current pay rate if recommended by the Director. If the voluntary reduction in grade is in lieu of layoff, the Director may designate any lower rate in the salary range as a condition of the voluntary reduction in grade.

A work test is not required for a voluntary reduction in grade, but the employee must have a performance evaluation by the end of six (6) months in the new position. If an employee subsequently wishes to return to the higher classification, he/she must compete in the promotional process.

C. TRANSFER

If the employee maintains his/her current classification, his/her rate of pay will remain the same. If his/her classification changes, but does not result in a promotion, the Director may determine the appropriate salary based on the relationship of the duties and responsibilities of the two positions. Should an employee accept a transfer at a lesser rate of pay, the acceptance shall be acknowledged in writing by the employee.

4.6 SPECIAL PAY PROVISIONS

The Human Resources Manager shall designate to the Executive Management Team (EMT) the classifications which are to be considered non-exempt, exempt, or top management for the purposes of this section in accordance with the definitions set out in Chapter 7.

A. OVERTIME PAY

1. It is the policy of the Department that overtime shall not be worked unless essential to the public interest or to preserve public health and safety. Where overtime is deemed necessary, the opportunity to work overtime should be offered equally to all non-exempt employees qualified to do the work. All overtime work must be authorized by the job supervisor and then approved by the Director or designee.
2. Any overtime work shall be scheduled in advance (except in emergency situations) by the immediate supervisor of the non-exempt employee working the additional hours. Such an employee shall have the right to refuse overtime unless four (4) hours advance notice is given. If it is determined by the Director or designee, that an emergency status exists affecting the health, welfare, and/or safety of the community or the efficient operations of the department, the advance notice is waived.

3. Rate of pay for overtime shall be calculated at one and one-half (1.5) the employee's hourly rate of pay.
4. In no event will there be any compounding of overtime and holiday pay, e.g. an employee who works ten (10) hours on a holiday will be compensated for all times at the holiday rate. The additional two (2) hours will not be paid at three and three-fourths (3.75) the regular rate of pay.

B. COMPENSATORY TIME IN LIEU OF OVERTIME – ELECTION BY NON-EXEMPT EMPLOYEE

Non-exempt employees who are required to work in excess of their regularly assigned work schedule may elect to receive compensatory time off in lieu of overtime in accordance with the provisions as set out below. Election of comp-time must be voluntary on the part of the employee.

1. Such compensatory time off shall be earned at a rate of one and one half (1.5) hours for each hour of overtime worked.
2. A non-exempt employee can not accrue more than two hundred and forty (240) hours of compensatory time off in a calendar year. A non-exempt employee who has elected compensatory time in lieu of overtime and has accrued two hundred and forty (240) hours of compensatory time off shall for any additional overtime hours worked above the limit, be paid overtime compensation (in cash).
3. A non-exempt employee who has accrued such compensatory time off shall be permitted to use such time within a reasonable period after making the request if the use of compensatory time off does not unduly disrupt the operations of the Department. An employee is required to utilize any accrued compensatory time before taking vacation or personal leave.
4. A non-exempt employee who has accrued compensatory time off, shall upon termination be paid for the unused compensatory time at a rate of compensation not less than:

the average regular rate received by such a non-exempt employee during the last three (3) years of employment,

or

the final regular rate of pay received by such an employee, whichever is higher.
5. The Director may make these rules and/or related policies more specific, particularly in regard to the time period for which a non-exempt employee may elect to accrue and take compensatory time and/or when he/she shall be compensated as long as said time period for same is less than the maximum period established by the Board.

C. COMPENSATORY TIME FOR EXEMPT EMPLOYEES

Top-level management (see definition Chapter 7) employees are not eligible for overtime or compensatory time off. All other exempt employees who are required to work in excess of their regularly assigned work schedule during the designated work period shall be granted compensatory time, such time to be computed at straight time.

Certain exempt employees may receive pay in lieu of compensatory time under emergency situations (see Policy 4.6 C I Exempt Overtime Pay in Emergency Situations). The exempt employee may be permitted to use such compensatory time earned within a reasonable time after making the request, if the use of such time does not unduly disrupt the operations of the Department. An employee is required to utilize any accrued compensatory time before taking vacation or personal leave.

D. WORK HOURS AND OVERTIME AND/OR COMPENSATORY TIME

Computation of overtime and/or compensatory time shall be based on time worked in excess of 40 hours in a designated work period. Time scheduled as vacation, holiday, jury duty, injured in line-of-duty during a designated work period shall be construed for purposes of calculating overtime or compensatory time as time actually worked.

E. ACCRUAL AND PAYMENT OF COMPENSATORY TIME

1. Compensatory time will be accrued on an annual basis beginning on January 1st and ending on December 31st.
2. Non-exempt employees will normally be paid for unused compensatory time on an annual basis, but may be paid quarterly or semiannually if provided for in the department's rules. Non-exempt employees who have compensatory time on the books as of December 31st, which has not been taken or scheduled by April 30th of the following year, will be paid for such compensatory time by May 22nd at the employees regular rate of pay at the time payment is made.
3. Exempt employees will not be paid for unused compensatory time except when laid off. An exempt employee must use all compensatory time accrued in a calendar year by June 30th of the following year or such time will be forfeited.

4.7 COMPENSATION FOR WORK ON AN OFFICIAL HOLIDAY

A non-exempt employee who is required to work on an official holiday shall be compensated at one and a half (1.5) times his/her regular hourly rate for each hour actually worked on the holiday, in addition to receiving his/her regular pay for the holiday. If the non-exempt employee has elected compensatory time, he/she shall receive his/her regular pay plus one and a half (1.5) hours compensatory time for each hour worked on the holiday.

Exempt employees who are required to work on a holiday shall receive compensatory time off, such time to be computed at straight time equal to the number of hours actually worked on the holiday. Non-supervisory professionally exempt employees working on a holiday may, at the discretion

of the Director or designee, earn one and a half (1.5) hours for each hour worked.

4.8 SHIFT DIFFERENTIAL PAY

Shift differential pay may be authorized in conformance with policies approved by the Board.

4.9 WORKING IN A HIGHER CLASSIFICATION

If an employee is formally assigned duties, responsibilities and/or work assignments of a higher job classification than his/her current classification, the employee shall receive "out-of-class" compensation in accordance with the following guidelines. Employees working in a higher classification must meet the minimum requirements of the position.

- A.** The rate of the out-of-class pay shall be equivalent to the rate the employee would receive if actually promoted.
- B.** In order to qualify for out-of-class compensation, the assignment:
 - 1.** Must receive prior written approval of the Director of Finance and Administration and Bureau Director.
 - 2.** Must have become necessary due to the absence of an incumbent or vacancy in a budgeted position of the higher classification, and
 - 3.** Must consist of duties and responsibilities typical and customary of an existing higher grade classification which are not specified in, nor typical and customary of, the employee's current classification.
- C.** Out-of-class compensation shall begin on the first day the employee performs the higher level work, provided he/she continues to do so for more than ten (10) consecutive workdays. Performing out-of-class duties for ten (10) consecutive workdays or less does not qualify for the higher rate of pay.
- D.** If an employee receives a pay increase in his/her lower classification while he/she is working in the higher classification, his/her out-of-class pay shall be recalculated based upon the new rate in the lower classification. The employee may or may not realize an increase in his/her out-of-class rate.
- E.** If an employee working in a higher classification is promoted to fill the position for which he/she has been working out-of-class, the employee's rate of pay will be set at the rate he/she is being compensated at while working out-of-class.
- F.** Employees who qualify for out-of-class compensation shall continue to receive the higher rate of pay while on vacation, sick leave, or an official holiday provided the higher position is not being filled by another employee.
- G.** No out-of-class assignment may exceed one hundred (100) working days in a calendar year (exempt or non-exempt) without the review and approval of the Board, except when the employee normally assigned to the position is on extended leave. In such cases the out-of-class assignment may continue until the leave expires.

4.10 ORIGINAL APPOINTMENT

The minimum salary rate normally shall be paid on original appointment. All requests to hire above the minimum salary must be approved by the Director or designee. Those requests for a salary above the control point require Board approval and are submitted for their approval at the discretion of the Director. The hiring supervisor must provide justification to the Bureau Director, who if in agreement will submit the request to the Director.

Note: The Public Health Nurse 2 classification allows for appointment above the minimum salary as outlined in the pay plan.

4.11 CALL BACK PAY

An employee called to report to a work site outside his/her regularly scheduled time will be compensated for a minimum of three (3) hours, except when such time is continuous with the employee's work shift. This does not apply to work performed at home or multiple call backs within the same day (midnight to midnight).

4.12 SEPARATION PAY

An employee whose services are being terminated, either voluntarily or involuntarily, shall be paid for all regular earnings due and accrued vacation pay, but shall not be paid for any unused sick leave except as part of a sick leave buyout program approved in accordance with section 5.6 G. Sick Leave Buyout. In addition, an employee whose services are being terminated because of layoff will be entitled to payment for compensatory time due as provided in the procedures for layoff. Terminating employees will not accrue additional vacation or sick leave once they are no longer reporting to work.

CHAPTER FIVE

ATTENDANCE AND LEAVE

5.1 WORK HOURS

The Director will establish the regular work period, shifts and work hours for the department, which will be part of the departmental rules.

The currently established regular work week for the Department employees shall be Monday through Sunday. The regular hours of work shall be from 8:00 a.m. to 4:30 p.m. Some employees may be assigned a different schedule (work week or hours) either temporarily or permanently due to the particular needs and/or existing conditions in a given division or other organizational unit.

5.2 ABSENTEEISM AND TARDINESS

All employees are expected to be prompt in reporting for duty at the beginning of each work day, returning from breaks, returning from lunch, and are expected to be in attendance as scheduled and in compliance with department policy and procedures. See Policy 5.2 I Attendance.

5.3 ABSENT WITHOUT LEAVE (AWOL)

An employee who fails to report to work for whatever reason, unless prior approval has been given, shall be required to notify his/her supervisor stating a reason for his/her absence. This notification must be made as soon as possible, but no later than during the first thirty (30) minutes of the employee's scheduled workday. When notification is given, the supervisor may approve the absence or deny the request for leave and charge the employee with AWOL if he/she does not report for duty within an acceptable period of time. The failure of an employee to comply with this rule or having time recorded as absent without leave may be considered grounds for disciplinary action. Any unapproved absence, which continues for three (3) consecutive workdays without any notification from the employee, may be considered as job abandonment.

5.4 ELIGIBILITY TO OBSERVE AND ACCRUE LEAVE

Full-time, probationary, and part-time employees who work at least twenty (20) hours per week are eligible to observe paid holidays and accrue vacation and sick leave. Part-time employees who are scheduled to work at least twenty (20) hours per week shall observe pro rata holidays and earn vacation and sick leave at the same proportion as their scheduled hours bear to a regular full-time work week.

An employee whose services are being terminated, either voluntarily or involuntarily, shall not accumulate any additional vacation or sick leave once they are no longer reporting to work (see Section 4.12 Separation Pay).

Temporary, seasonal, emergency, contractual and part-time employees who work less than twenty (20) hours per week shall not be eligible to observe holidays or earn vacation and sick leave.

5.5 VACATION LEAVE

A. VACATION LEAVE ACCRUAL AND EARNING SCHEDULE

Vacation leave is accrued on the first day of each month based upon the employee's years of service and the employee's attendance record during the previous month. Generally, with some exceptions, an employee must be in a paid status the entire calendar month in order to earn a vacation day (see Policy 5.5 A I Eligibility to Earn Vacation and Sick Leave). A new employee's vacation leave shall begin to accrue once he/she has worked in a paid status for an entire calendar month, but may not be utilized until after completion of the probationary period. The Bureau Director will determine those situations (if any) where a new employee may need to be granted approval to use vacation leave before the end of their probationary period. Employees who have completed a probationary period with another Metro Department and are employed via a department transfer or are recalled after a layoff are not required to complete their probationary period (if applicable) before utilizing their vacation leave. Partial credit towards completion of a probationary period will be given to a department transfer for purposes of utilizing vacation leave only. No employee may give or loan vacation leave to another employee.

Vacation leave not used during the calendar year may be carried forward to subsequent years up to the maximum accumulation amounts shown in this section.

<u>Years of Service</u>	<u>Number of Hours Earned</u>		<u>Maximum Accumulation</u>
	<u>Per Month</u>	<u>Per Year</u>	
Less than 5 years	8	96	240
5 Years	12	144	360
10 Years	14	168	420
20 Years	16	192	480

B. REQUESTING VACATION LEAVE

Vacation leave requests should be submitted as soon as possible, but not less than two (2) business days in advance. The leave request must be approved before the employee takes the time off. Where scheduling makes it necessary, the supervisor may institute a policy requiring a longer notification time frame in order to ensure that adequate coverage of services can be provided. In granting the vacation leave, consideration must be given to the needs of the department and to the ability of the remaining staff to perform the work. Requests for vacation leave of more than ten (10) consecutive workdays must be turned in as soon as possible and no less than thirty (30) days in advance of the requested leave. Approval may be granted by the supervisor after consultation with and approval of the Bureau Director.

C. PAYMENT FOR VACATION LEAVE

Any earned but unused vacation leave credited to an employee shall be paid to said employee upon his/her termination of employment from the Department.

5.6 SICK LEAVE

A. POLICY

Sick leave shall be considered a benefit and privilege and not a right. An employee may utilize his/her sick leave allowance for absences due to his/her own illness, non-occupational injury or illness, or development or existence of a contagious disease endangering the health of other employees. Sick leave may be used for appointments with a licensed health professional. It may also be used for absences due to illness, injury or licensed health professional appointment of a member of the employee's immediate family, if the employee's presence is deemed absolutely necessary. Members of immediate family for this purpose shall mean spouse, child, or parent, regardless of residence. In the event of the employee being the only surviving relative, sick leave may be extended to include the care of a brother, sister, or grandparent (verification may be required in this instance). When appropriate, a partial sick day shall be used rather than a full day. Any planned use of sick leave (such as for a doctor's appointment) must have prior approval of the employee's supervisor. Employees who become ill during the period of their vacation may request that their vacation be temporarily terminated and the period of illness changed to sick leave. Such request, if granted, must be justified by medical evidence or a medical provider's statement upon return to work. No employee may give or loan sick leave to another employee.

B. SICK LEAVE ACCRUAL AND EARNING

Sick leave is accrued on the first day of each month based upon the employee's attendance during the previous month. Generally, with some exceptions, an employee must be in a paid status the entire calendar month in order to earn a sick day (see Policy 5.5 A I Eligibility to Earn Vacation and Sick Leave). A new employee's sick leave shall begin to accrue once he/she has worked in a paid status for an entire calendar month. Employees shall accumulate sick leave at the rate of eight (8) hours per month. Unused sick leave may be accumulated to a maximum of fourteen hundred and forty (1,440) hours for employees hired before July 1, 2004. Employees hired on or after July 1, 2004 may accumulate a maximum of nine hundred and sixty (960) hours.

Any hours earned in excess of the fourteen hundred and forty (1,440) or nine hundred and sixty (960) hour maximum will be placed in a separate "bank" as pension credits, to be applied toward a service pension (as outlined by Employee Benefit Board guidelines). Once pension credits are placed in this bank, they cannot be transferred back for regular sick leave use. For example, an employee has fourteen hundred and forty (1,440) sick hours and accrues ninety-six (96) more hours that are placed in the "bank" as pension credits. If he/she uses one hundred and sixty (160) hours of sick leave, they will be deducted from the fourteen hundred and forty (1,440). The ninety-six (96) hours of pension credits will remain in the bank. The employee would

have to accrue one hundred and sixty (160) hours of sick leave and reach fourteen hundred and forty (1,440) again before any additional hours go in the bank as pension credits. Any hours in the bank as pension credits are never available to be used for sick leave.

C. MEDICAL DOCUMENTATION OF SICK LEAVE

An employee may be required to provide a physician's statement verifying his/her use of sick leave, regardless of the length of time involved, when the employee develops a documented pattern of attendance which indicates that there may be a problem, or if abuse of sick leave is suspected (see Policy 5.2 I Attendance). Such physician's statement should verify that the time was needed for medical purposes, but not give specific medical information. If the Director has reason to question the validity of a claim for continued sick leave, he/she shall require the employee to be evaluated by the Civil Service Medical Examiner.

When an employee's continuing illness spans ten (10) or more workdays, he/she may be required to furnish a physician's statement which shall include the date the employee is anticipated to return to work. Additional physician's statements may be required every ten (10) work days thereafter until the employee returns to work. If, based on medical information, it appears that an employee can no longer perform the essential duties of his/her position, the Director may refer him/her to the Civil Service Medical Examiner for a recommendation as to the provision of reasonable accommodation or the employee's fitness for continued employment. If the Civil Service Medical Examiner determines that the employee is not physically fit for continued employment and his/her condition cannot be reasonably accommodated, the Director will notify the employee that he/she must immediately apply for a disability pension, if eligible.

D. ABUSE OF SICK LEAVE

An employee who is suspected of abusing sick leave may be required to provide a physician's statement verifying his/her illness. Employees who abuse sick leave, or deliberately cause others to make false or misleading statements or claims shall be subject to dismissal or other appropriate disciplinary action. Any supervisor knowingly condoning unjustified sick leave of an employee shall be subject to disciplinary action.

E. CONVERSION OF SICK LEAVE

Employees having one hundred and ninety-two (192) or more sick leave hours, in January of each year, may elect to convert up to twenty-four (24) sick leave hours to twenty-four (24) personal leave hours. Such hours are not cumulative and must be scheduled and taken in the current calendar year and cannot be reconverted to sick leave. Hours not converted will continue to accumulate as sick leave.

F. SICK LEAVE BUY-OUT

Generally, when an employee leaves employment with Metro Government, he/she forfeits unused sick leave. Upon approval by the Board and the Department of Finance, however, a program may be enacted to allow retiring employees to be paid for a portion of unused sick leave. The specifics of any such plan will be determined in conjunction with the approval required.

5.7 HOLIDAYS

A. HOLIDAY SCHEDULE

The following will be declared official holidays, and all employees will be excused without charge to leave, except those employees required to maintain essential operation, who shall be compensated in accordance with Section 4.7 Compensation for Work on an Official Holiday.

New Year's Day	January 1
Martin Luther King Day	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

Holidays that fall on Sunday will be observed on the following Monday and holidays that fall on Saturday will be observed on the Friday before by those employees working Monday through Friday. On those occasions when Christmas Day falls on Monday, the Christmas Eve holiday will be observed on the Tuesday following Christmas Day; on those occasions when Christmas falls on Saturday, the Christmas holiday will be observed on the subsequent Monday. If a holiday is observed on an employee's day off, the employee may be scheduled for a floating holiday during the week of the holiday or the following week. If community practice dictates a change in the day observed, the Director shall have discretion to change the dates for that year.

B. EFFECT OF LEAVE WITHOUT PAY ON HOLIDAY PAY

An employee who is on any form of leave without pay on the work day immediately preceding or immediately following a holiday or holiday weekend shall not be paid for the holiday. This provision applies to tardiness and absences of any length of time. Official holidays occurring during any other paid leave shall not be charged to the employee's other paid leave time.

5.8 INJURY-ON-DUTY (IOD) LEAVE

A. PURPOSE

Injury leave is used when an employee has an on-the-job injury or develops an occupational illness arising from employment with the Department. It is intended to provide salary continuation and job security until such time as the employee can return to his/her regular duties, with or without accommodation, or is determined as disabled from performing the essential duties of his/her job.

B. NOTICE OF INJURY

Injury - Every injured employee or his/her representative shall, immediately upon the occurrence of an injury, even if medical attention is not needed, give written notice of the injury to his/her supervisor. If an injury is not realized upon occurrence, written notice must be given the next working day after realization and within ten (10) workdays after the occurrence of the injury.

Occupational Illness - When an incident occurs which may result in an occupational illness, the employee or his/her representative shall immediately give written notice of the incident to his/her supervisor, even if no medical treatment is needed at that time. If a directly related occupational illness develops later, the employee must report give written notice to his/her supervisor within ten (10) working days after diagnosis.

General Notice Requirements - Reporting of in-line-of-duty injuries and follow-up case management will be under the guidelines of the Employee Benefit Board.

C. DETERMINATION OF INJURY LEAVE

It shall be the responsibility of the Director or his/her designated representative to determine if an employee reporting an injury or occupational illness is entitled to injury leave. An employee may appeal through the grievance procedure if he/she disagrees with the determination. Injury leave should not be granted in the following circumstances:

Injury

1. Injury leave should be denied in those cases where the written notice is given on time, but the Director or designee has reason to doubt the legitimacy of a claim for injury leave or the medical information is inconclusive.
2. Injury leave should be denied from the date of an injury to the date of giving written notice unless it can be shown that the supervisor had actual knowledge of the accident.
3. Injury leave should be denied if written notice of the injury is not given the supervisor immediately and the Director or designee has reason to doubt the legitimacy of the claim for injury leave.
4. Injury leave should be denied if written notice is not given within ten (10) working days of the accident unless it can be shown that the supervisor had actual knowledge of the accident.

Occupational Illness -

1. If the illness is attributed to a specific incident and the employee failed to give written notice of the incident immediately to the supervisor, injury leave should be denied. Some illnesses are not attributable to a specific accident or illness. In such cases injury leave should be denied if the Director or designee has reason to doubt the claim for injury leave or the medical information is inconclusive.
2. Injury leave not attributable to a specific incident should be denied if written notice of the illness is not given to the supervisor within ten (10) days of the diagnosis.

Willful Misconduct or Intentional Self-inflicted Injury and Pre-existing Conditions -

Injury leave should be denied if the injury is due to the employee's willful misconduct or intentional, self-inflicted injury; due to intoxication; due to a willful failure or refusal to use a safety appliance; or a sports-related injury unless participation is required by the job description. In order for aggravation of a pre-existing condition to be covered as injury leave, the employee must cite the specific incident which caused the problem.

D. PERIOD OF COMPENSATION

Leave for an injury shall extend for such time as the injured employee is unable to work, but in no event beyond one hundred and thirty (130) workdays for the same or recurring injury. When the Civil Service Medical Examiner determines that the employee is disabled and will not be able to return to work, after full consideration of possible reasonable accommodation, the employee should immediately apply for the appropriate pension. An employee applying for a disability pension is required to notify the Director, who will investigate the possibility of accommodating the employee's restrictions before the pension application is processed.

If, after exhausting all one hundred and thirty (130) work days of injury leave, an employee has returned to work, and in a calendar year subsequent to the year the employee exhausted his/her six (6) months injury leave, the employee requires surgery for the same or recurring injury, the employee shall receive up to thirty (30) additional workdays injury leave per calendar year for the purpose of having surgery performed and recovery from surgery. This additional leave shall be available in any subsequent calendar year following the year the initial one hundred and thirty (130) workdays injury leave was exhausted, so long as the employee is actively at work for the Metropolitan Government. See Policy 5.8 D I Light Duty Reassignment.

E. COMPENSATION RECEIVED

During the period of time that an employee is on injury leave he/she shall be entitled to receive his/her pay as established by the Pay Plan, subject to all other provisions as set out herein.

F. USE OF SICK LEAVE

An employee who is injured on-the-job or develops an occupational illness shall be granted injury leave. Such leave shall not be charged against the employee's sick leave nor may the employee use sick leave for such time

with the following exception: An employee shall be allowed to use up to five (5) of his/her sick days available in each subsequent year for a recurrence of an IOD injury after the initial one hundred and thirty (130) days of injury leave are exhausted.

G. EMPLOYEE CLAIM AGAINST THIRD PARTY

When an on-the-job injury was caused under circumstances creating a legal liability against someone other than the Metro Government, the injured employee shall have the right to receive injury leave benefits and may pursue his/her remedy by proper action in a court of competent jurisdiction against the person. In the event of recovery against such third party by judgment, settlement or otherwise, and the Government's maximum liability for benefits has been partially or fully paid and discharged, the Government shall have a subrogation right thereof against such recovery. If the net recovery by the injured employee exceeds the amount paid by the Government and a future liability is anticipated, the Government shall be entitled to a credit on its future liability.

5.9 MILITARY LEAVE

A. ANNUAL TRAINING

Employees who are members of any military reserve component will be granted Military Training Leave, with pay, for such time as they are in the military service on field training or active duty for periods not to exceed fifteen (15) workdays per calendar year. Such requested leave shall be supported with copies of the armed forces orders and follow-up documentation and shall be granted by the Director. Such leave with pay is not permitted for initial basic training. See Policy 5.9 I Military Leave Special Provisions.

B. ADDITIONAL TRAINING

Employees who are members of a military reserve unit who have completed their military training duty for the calendar year and are reactivated for additional training will be allowed an additional fifteen (15) workdays military leave, with pay, if the additional military training:

1. Occurs during the same calendar year, and
2. Fulfills the employee's military training obligation for the subsequent calendar year.

C. REEMPLOYMENT FOLLOWING ACTIVE DUTY

Former employees will be granted reemployment rights as provided by law.

5.10 JURY DUTY

Upon receiving a summons to report for jury duty any employee shall, on the next day he/she is engaged in his/her employment, exhibit the summons to his/her immediate superior and the employee shall thereupon be excused with pay from his/her employment for the day or days required of him/her while serving as a juror in any court of the United States or the State of Tennessee, provided that such employee's responsibility exceeds three (3) hours during the day for which excuse is sought. When jury service, including travel, does not exceed three (3) hours the employee shall be

required to return to work. In addition to his/her pay, the employee will be allowed to retain any per diem paid to him/her by the court. During the absence, it is the employee's responsibility to notify his/her supervisor of any changes in the anticipated duration or schedule of jury duty. After completion of the jury duty, the employee must submit a written notice verified by the court clerk's office showing the hours served on jury duty.

If an employee summoned for jury duty is working a night shift or is working during hours preceding those in which court is normally held, such employee shall also be excused with pay from his/her employment as provided by this section for the shift immediately preceding his/her first day of service on any lawsuit. After the first day of service, when such person's responsibility for jury duty exceeds three (3) hours during a day then such person shall be excused from his/her next scheduled work period occurring within twenty-four (24) hours of such day of jury service. Any question concerning the application of this provision to a particular work shift or shifts shall be conclusively resolved by the trial judge of the court to which the employee has been summoned.

5.11 BEREAVEMENT LEAVE

In the event of a death in an employee's immediate family, the employee shall be granted a reasonable paid absence up to three (3) workdays. Consideration will be given to the relationship of the employee to the deceased, the employee's responsibilities, logistics, travel, etc. An employee may be granted up to one (1) full work shift to attend the funeral of a member of the extended family.

IMMEDIATE FAMILY - Spouse, parents, children, siblings, grandparents, grandchildren, mother-in-law, father-in-law, daughter-in-law or son-in-law, legal guardians or dependents of the employee; step or half relations shall be given the same consideration as blood relatives of the same type

EXTENDED FAMILY - aunts, uncles, nieces, nephews, sister-in-law, brother-in-law of the employee

5.12 LEAVE WITHOUT PAY

Leave without pay may be granted at the discretion of the Director for any reason up to one hundred and twenty (120) calendar days. Leave without pay, which exceeds the previously stated limits, must be approved by the Board. Requests for leave without pay must be in writing stating the specific reasons for the request. The employee's length of service, job performance record, attendance record and the special circumstances surrounding the request will all be taken into consideration in determining the merits of the request. See Policy 5.12 I Leave Without Pay.

The Director shall not fill the position held by the employee on leave without pay except temporarily until the leave of absence has expired and not been extended or the employee notifies the Director in writing, that he/she will not be returning to the position. The Director may request that this leave be rescinded and that the employee be ordered to return to work.

Leave without pay in excess of twenty (20) cumulative workdays in a calendar year will be deducted from the employee's continuous service date for the purposes of determining longevity, pension, and leave accrual.

The above provisions concerning the maximum length of time an employee may be granted leave without pay do not apply to employees on leave pursuant to a reasonable accommodation under the Americans with Disabilities Act.

5.13 ADMINISTRATIVE LEAVE

Administrative leave may be granted to any employee at the discretion of the Director when, in his/her judgment, there exists good cause in the best interests of the Department to do so. Administrative leave shall be with or without pay and may not exceed ten (10) work days without the approval of the Board.

5.14 MATERNITY LEAVE

Sick leave will be granted for maternity purposes when supported by a medical certificate that the employee is physically unable to perform her duties. The employee may also take any accumulated vacation time and/or request leave without pay. Provisions of the Family and Medical Leave Act (FMLA) and the Tennessee Maternity Leave Law (Appendix 3 and 4) shall apply.

5.15 FAMILY AND MEDICAL LEAVE ACT OF 1993

Employees who are eligible for leave under the Family and Medical Leave Act (FMLA), may be granted an appropriate form of leave, paid or unpaid, as established in this chapter. The provisions of this law are provided in Appendix 3. See Policy 5.15 I FMLA.

5.16 PARENT TEACHER CONFERENCES

Employees, who are scheduled to work, shall be granted up to three (3) hours administrative leave on the first day of school to attend school with their child if requested, provided it does not disrupt the workplace. Furthermore, each employee shall be allowed to use up to six (6) hours sick leave per child a year, to attend school functions or parent/teacher conferences, again, provided it does not disrupt the workplace.

CHAPTER SIX

EMPLOYEE CONDUCT, DISCIPLINARY ACTION AND GRIEVANCE PROCEDURES

6.1 GENERAL EMPLOYEE CONDUCT

An employee of the Department shall not engage in any criminal, dishonest, infamous, immoral, or disgraceful conduct or behavior, activity or association which discredits himself and/or the department. Each employee is expected to conduct himself both on and off the job in such a manner as to reflect credit on himself, the department, and the Metropolitan Government.

It shall be the duty of each employee to maintain high standards of cooperation, efficiency, and economy in his/her work for the Department. When work habits, attitude, production, or personal conduct of an employee falls below a desirable standard, supervisors shall point out the deficiency at the time it is observed. Warning in sufficient time for improvement should precede formal disciplinary action, but nothing in these Rules and Regulations shall prevent immediate formal action whenever the interest of the Department requires it.

It shall be the employee's responsibility to report to the Director, any conviction or alternative pleading to any misdemeanor or felony violation of Federal, State or Local Law. Written notification shall be within three (3) business days or upon return to work (which ever occurs first).

No employee shall consciously and by overt act deprive any person of any rights to which such person is entitled under any State law, Federal law, or law, ordinance, rule or regulation of the Metropolitan Government.

Any person other than a member of the Board may request that the Director initiate charges against an employee. As in the case with any disciplinary matter, the Director shall make such inquiries and investigations necessary to determine if any corrective or disciplinary action should be taken.

Each employee shall perform his/her duties fairly, impartially and without discrimination on account of race, color, national origin, gender, age, religion, disability, friendship, family or political affiliation, employee representative, organization affiliation, or other organizational affiliation.

No employee shall directly or indirectly solicit nor accept any money, service, favor or other consideration for carrying out his/her duties as an employee. See Appendix 1 and 2 regarding Ethics and Disclosure.

6.2 POLITICAL ACTIVITY

Political activities, including running for political office, are not to be conducted at the workplace or during working hours. Time off for such purposes will be in accordance with applicable leave policies in these Civil Service rules. Civil Service employees should refer to state law concerning any further rights to engage in political activities.

6.3 CORRECTIVE ACTION (REPRIMAND)

Any supervisor may take corrective action by issuing a written or oral reprimand to an employee as needed. This action may be taken in an effort to correct a situation that, if uncorrected, may require formal disciplinary action. The employee shall be expected to sign the reprimand as evidence that he/she has received a copy, such signature bearing no indication of agreement or disagreement. If an employee refuses to sign, the supervisor should so note on the reprimand and date it by his/her own hand. While written or oral reprimands are not forms of disciplinary action, an employee may state his/her version of the incident in writing and have it filed in his/her personnel file along with the reprimand.

A copy of any written reprimand or notation of an oral reprimand **must** be placed in the employee's personnel file. After one (1) year from the date of its issuance, the document shall not be used in the evaluating the performance of an employee, provided the employee received no further written reprimands nor disciplinary action concerning the same or similar deficiencies. Any written reprimand or notation of an oral reprimand issued to an employee and all related documents shall upon written request of the employee be removed from their file after a period of two (2) years; provided the employee has received no further written reprimands nor disciplinary action concerning the same or similar deficiencies. This written request will be placed in the personnel file and will remain there permanently. The documents will be placed in an inactive reprimand file maintained by the Human Resources Division.

6.4 ABSENTEEISM AND TARDINESS

Consistent attendance and promptness are important factors of employment for all employees of the Metropolitan Government. Excessive absenteeism and/or tardiness are grounds for appropriate disciplinary action. Guidelines to be used for dealing with excessive absenteeism or tardiness are referenced in the Attendance Policy 6.4 I. The guidelines below also apply.

- A.** If an employee is late for work relative to the start of his/her regular work shift or his/her return from scheduled lunch or breaks, the employee may be subjected to loss of pay.
- B.** An employee who develops a pattern of attendance and/or tardiness problems should be counseled for improvement and should be reprimanded if counseling is not adequate. If the problems continue the employee may be subject to disciplinary action; however, counseling and reprimand are not pre-requisites for disciplinary actions, especially when incidents of AWOL are part of the problem.

6.5 DISCIPLINARY ACTION

A. TYPES OF DISCIPLINARY ACTION

In the interest of good discipline, the Director or designee may for just cause and after proper notice and hearing take the following types of disciplinary action:

Suspension

The Director may suspend an employee without pay for cause provided that the suspension does not exceed an accumulation of 30 working days during a twelve (12) month period. Any suspension requires that the employee not be allowed to report to work and that his/her pay actually be docked.

Demotion

Disciplinary demotions include reduction in grade and/or salary; they may be temporary or full. An employee may be demoted to a lower classification with a lower salary grade or to lower pay in the same classification pay range.

- 1. Temporary Demotion** - Those from thirty (30) to one hundred and eighty (180) consecutive calendar days. An employee who receives a temporary demotion in grade may continue to be assigned his/her normal duties but will not be eligible for out-of-class pay for the normal classification during the period of the temporary demotion.
- 2. Full Demotion** - Those that are for an indefinite period. In order for a demoted employee to return to his/her original classification he/she must successfully compete in the promotional process.

Dismissal

An employee may be terminated from employment with the Department.

B. GROUNDS FOR DISCIPLINARY ACTION

The following constitute grounds for disciplinary action as defined in the preceding section:

- 1.** Neglect or failure to perform official duty.
- 2.** Deficient or inefficient performance of duties.
- 3.** Insubordination or disrespect.
- 4.** Absence without notification or approval for leave.
- 5.** Failure to follow the lawful and reasonable directions given by a supervisor.
- 6.** Drinking intoxicating beverages, using drugs not specifically prescribed to the employee by a licensed medical provider, or using a controlled substance while on duty, whether under the influence of the beverage, drug or controlled substance or not.

- 7.** Being under the influence of intoxicating beverages, drugs not specifically prescribed for the employee by a medical provider, or controlled substances when on duty or upon reporting to duty.
- 8.** Public intoxication while off duty, in uniform, or wearing any other evidence of being an employee of the Department or when driving a government owned vehicle.
- 9.** Possession of illegal drugs or a controlled substance while on or off duty or any violation of Civil Service or departmental rules, policies, or procedures related to the substance abuse program. See Policy 6.5 B I Substance Abuse.
- 10.** Violation of any provision of the Metropolitan Charter and Ordinances or any written Executive or Administrative Orders.
- 11.** Violation of any rules, policies or procedures of the Department, including those of the employee's respective division or program.
- 12.** Violation of any of the rules or regulations of the Board.
- 13.** Dishonesty including giving false statements with the intent to mislead.
- 14.** Immoral conduct.
- 15.** Conviction of a felony.
- 16.** Inability to perform duties, when reasonable accommodation has been considered and cannot be made.
- 17.** Neglect or failure of any employee to properly and promptly make reports or furnish information specifically required by the Board.
- 18.** Excessive absenteeism and/or excessive tardiness and/or abuse of leave.
- 19.** Violation of safety rules, regulations or procedures.
- 20.** Unauthorized sleeping on duty.
- 21.** Damage to or loss of Metropolitan Government property caused by negligent acts of the employees.
- 22.** Unlawful or unauthorized possession of a weapon, as defined by applicable laws, while on duty or while on Metro property.
- 23.** Using abusive or profane language so as to create a disturbance in the work place or when directed toward a member of the public.
- 24.** Gambling on the premises of the Department or while on duty.
- 25.** Falsifying any document of the Department or Metropolitan Government including employment or promotion application.
- 26.** Unauthorized use or disclosure of confidential information.
- 27.** The use or threat of violence or intimidation.

- 28. Participation in strikes, work slow-downs, boycotts, sick-ins, picketing for the purpose of preventing others from coming to work or other similar job actions.
- 29. Unlawful discrimination on the basis of race, gender, color, age, religion, national origin, disability or lawful political or employee group affiliation.
- 30. Any failure of good behavior which reflects discredit upon himself, the department and/or the Metropolitan Government.
- 31. Conduct unbecoming an employee of the Metropolitan Government.
- 32. Any attempt (outside of official Board meetings), directly or indirectly, by an employee to influence the judgment of the Board or any member thereof, with reference to any pending appeal or review before the Board.
- 33. Harassment toward an employee of the Department or member of the public.

C. DISCIPLINARY HEARING PROCEDURES

No suspension, demotion, or dismissal of a Civil Service employee shall become effective until minimum due process is provided for the employee as outlined below; provided however an employee may be placed on administrative leave with or without pay prior to the hearing by the Director or designee:

Summary

- 1. Notification of charges in writing
- 2. Disciplinary hearing
- 3. Notification in writing of action taken

Optional

- 4. Right to appeal decision to the Board. The appeal hearing is conducted by an Administrative Law Judge, a Hearing Officer, or the full Board as provided for in these rules.

- 1. Notification of charges:** The employee must be notified in writing of the act or acts which constitute grounds for disciplinary action, and the specific rules, regulations, provisions or orders which have been violated. The notification will include the date, time, and location of the disciplinary hearing with the Director or designee prior to disciplinary action, but the hearing may be waived at the discretion of the employee or his/her representative. If notification is required by mail, such notification shall be made by certified mail or hand-delivered.

2. **Disciplinary Hearing:** The hearing will be informal and conducted for the purpose of explaining the department's charges against the employee, and allowing the employee's response. This will be conducted by the Director or designee.

Note: The employee shall have the right to a representative. The employee shall have the right to present statements, witnesses, or any other information with regard to the charges. Attendance and participation by persons other than the Director or designee, the employee, the employee's representative(s), and witnesses shall be at the discretion of the Director or designee. The employee shall be able to obtain any documents and/or statements made by witnesses regarding the charges before the hearing, unless prohibited by law. The hearing may be conducted in person, by teleconference, or other acceptable means at the discretion of the Director.

3. **Notification of action taken:** The employee will be notified in writing of the action taken within ten (10) calendar days of the hearing. In addition, the employee will be advised that he/she may appeal the action to the Board.

4. **Appeal to the Board:** An employee may appeal disciplinary action in accordance with Section 6.6 Disciplinary and Grievance Appeal Procedures. The request must be filed within fifteen (15) calendar days of notification of the disciplinary action taken.

6.6 DISCIPLINARY AND GRIEVANCE APPEAL PROCEDURES

The Board conducts disciplinary and grievance appeals in accordance with the procedures adopted in Policy 6.6 I Disciplinary and Grievance Appeal Proceedings.

6.7 EMPLOYEE GRIEVANCE PROCEDURES

A. INTRODUCTION

The management of the Department recognizes that grievances, when handled properly, can be helpful to an organization. A sound grievance procedure can be useful in calling matters to the attention of officials when action is needed and can assist in establishing a harmonious and cooperative working relationship between employees.

Any aggrieved employee shall have the right to have one (1) representative of his/her choosing appear with him/her at all stages of the grievance procedures. A group of employees shall have the same rights to present a grievance, provided the group is represented by one (1) member of the grieving group and/or an employee representative at all stages of the grievance process.

B. DEFINITION

A grievance is defined as an employee's claim that he/she has been adversely affected by a violation, misinterpretation, misapplication or non-application of a specific law, ordinance, resolution, executive order, Civil Service Rule, regulation, procedure or policy.

C. NON-GRIEVABLE MATTERS

While the grievance procedure can be beneficial to an organization, there are boundaries that must be set concerning issues that are not grievable. These boundaries are set in order to maintain efficient operation of the Department and to prevent the obstruction of its goals and objectives.

The list below outlines subject areas which are considered to be non-grievable. Complaints concerning these areas may not be filed as grievances by employees nor may they be accepted as grievances by supervisors. If accepted it can be ruled non-grievable later by the Director or the Human Resources Director. Management should attempt to resolve these types of complaints through routine procedures. (In that complaints of this nature will usually involve an established rule or policy, employees should be encouraged to suggest revisions to such a rule or policy to the Human Resources Division at any time.)

1. Changes or requests for changes in the approved pay plan or benefits.
2. The merits of any uniformly applied Human Resource practice, policy or procedure established by laws, ordinance or Civil Service Rule.
3. Reductions in work force.
4. Management rights, such as work schedules, how work is organized, work assignments, and methods and procedures by which work is performed, unless otherwise provided in these rules.
5. Employee conduct and disciplinary action subject to the provisions of Sections 6.1 - 6.5.

Complaints alleging discrimination or other violations of applicable EEO laws must be filed as discrimination complaints and will be processed in accordance with the Section 2.1 B EEO Complaint Procedure.

In the event of a disagreement as to whether a complaint is grievable within the scope of this procedure, the employee may, by his/her simple written request, ask the Human Resources Director to make the determination.

D. DEPARTMENTAL GRIEVANCE BOARD

A Grievance Board shall be established and maintained by the Department. The board shall consist of not less than six (6) members or more than sixteen (16) members. Half of the members shall be appointed by the Director and the other half shall be elected by employees of the department. Vacancies shall be appointed or elected as needed in order to maintain the minimum amount of members; however, at least every four (4) years the board shall be reconstituted with new elections and appointments.

From the Grievance Board a Grievance Panel shall be selected whenever a grievance reaches Stage III as provided herein. The Grievance Panel shall consist of those employees selected as follows:

1. The employee bringing the grievance shall appoint one (1) member.
2. The Director shall appoint one (1) member.

3. The two (2) thusly appointed members shall appoint a third member.
4. If the two (2) originally appointed members cannot agree upon a third member, they shall be relieved and a new panel shall be appointed in accordance with 1), 2), and 3) above.
5. No employee who has been involved as a representative of the employee or has been involved in an official capacity in the handling of the employee's grievance shall be eligible to serve on that panel.

The Grievance Panel shall serve in a fact-finding and information-gathering capacity and shall make a recommendation to the Director as for a disposition of the issue(s) before it.

E. GRIEVANCE PROCEDURES

The Grievance Procedure will consist of three (3) stages, as outlined below. If an employee's grievance is not resolved at Stage I, he/she may proceed to subsequent stages in chronological order. If an employee's grievance is not resolved after Stage III, the employee may appeal to the Board.

Stage I - Written grievance to supervisor.

Stage II - Written appeal to the Director.

Stage III - Written appeal to appear before a Grievance Panel.

1. Stage I

Written grievance to supervisor: The first stage of any grievance consists of the employee's written presentation of his/her grievance to his/her immediate supervisor. This must be done within thirty (30) work days from the date the employee becomes aware or should have been aware of the occurrence of the matter from which the grievance arose. The employee may take his/her complaint at Stage I to the next supervisor in the new chain of command when the complaint concerns some action of the supervisor that the employee feels he/she is not able to discuss with the supervisor. It shall be the supervisor's responsibility to promptly consider the complaint, determine if the matter is grievable, and take action if appropriate. The supervisor shall inform the employee of his/her decision within ten (10) work days. If the complaint is grievable and cannot be resolved at this level the employee may proceed to Stage II.

2. Stage II

Appeal to the Director: The employee must write a letter to the Director stating his/her grievance and requesting to proceed to Stage II. The letter must be received by the Director within five (5) work days of receiving the supervisor's decision. If there is no resolution acceptable to both parties the Director or designee will attempt to resolve the grievance and will send a letter to the employee within ten (10) work days confirming any agreed upon resolution. The Director will notify the employee, within the same time period, that he/she may proceed to

Stage III. When this is done, the Director will delay his/her decision until receipt of the report by the Grievance Panel.

3. Stage III

Appeal to Grievance Panel: In order to proceed to Stage III the employee must write a letter to the Director stating his/her desire to do so within five (5) work days of receiving the decision given in Stage II. A copy of the written decision made at Stage II must accompany this letter and a copy of each must be sent to the Human Resources Manager.

The Human Resources Manager shall, within ten (10) work days of receipt, arrange for a Grievance Panel to be selected as provided for in this section. The Grievance Panel shall conduct an investigation which shall include review of the written grievance, previous recommendations and decisions rendered at Stage I and II and any other evidence pertaining to the grievance. The panel may also conduct a hearing where the aggrieved employee or his/her representative, the supervisory employees involved, and any witnesses may all present their respective points of view and consider any conciliatory measures (if any) recommended by the Grievance Panel.

Within twenty (20) work days from the date selected, the Grievance Panel shall submit a written report of its investigation along with a recommendation to the Director. Within ten (10) work days of receipt of the panel's report the Director shall render a decision and communicate in writing to the aggrieved employee. A copy shall be sent to the Grievance Panel, the Human Resources Manager and to all supervisory employees involved.

4. Appeal to the Board

The employee may, by his/her written request, appeal the decision of the Director to the Board. This appeal must be made within ten (10) work days of the written notification of the Director's decision. Appeals of the Director's final decision on a grievance matter will be conducted in accordance with Section 6.6 Disciplinary and Grievance Appeal Procedures.

5. Time Limitations

The time constraints referred to throughout the grievance section were included to assure a swift yet fair grievance process. The time limits must be adhered to unless extended by mutual agreement of both parties. In the event a grievance is not filed or is not appealed by the employee within the specified time limit, at any point in the grievance process, the matter will be considered as having been accepted by the employee or settled on the basis of the last disposition. In the event a grievance is not answered within the specified time limit, the employee may appeal the grievance to the next step in the process.

6. Enforcement of Grievance Decision

After a decision has been rendered in settling a grievance, it is expected that the decision would be placed into action as soon as possible. If after a grievance decision is made, there is an unusual delay in placing the decision into effect, the employee may seek the reason for the delay from the individual who made the decision. If no satisfactory answer is obtained and/or the delay continues, the employee should present the matter to the Director. If for any reason this action is unsuccessful, the matter may be directed to the attention of the Board.

F. MISCELLANEOUS GRIEVANCE PROVISIONS

1. Hours/Compensation

Any employee officially involved in the handling of a grievance will be considered on official duty during his/her normal work hours. This will include the employee filing the grievance, his/her representative, any employee assigned to the investigation, any employee called as a witness, and employees serving as fact-finders. All hearings, investigations, and settlements of grievances shall be processed during regular work hours whenever possible. All grievances shall be settled in accordance with the provisions of these procedures and there shall not be any undue interruptions, interference, or work stoppage which would curtail the processing of essential public service.

2. Witnesses

Metro employees who have direct, firsthand knowledge of the specific event or circumstances giving rise to a grievance may be required to give evidence at any step of the grievance procedure. The number of witnesses will be limited to those necessary for a fair presentation of the grievance.

3. Burden of Proof

The employee will bear the burden of proof in all grievance proceedings.

CHAPTER SEVEN

DEFINITIONS

The following definitions shall be applicable in these rules and regulations unless the context clearly indicates otherwise:

ABSENCE WITHOUT LEAVE (AWOL) - an absence from duty which was not authorized or approved and for which either the request was not completed or such request was denied

ACCIDENT REPORT - a required form which is completed by supervisors and signed by employees to report all on-the-job accidents and injuries

ADDRESS - the street, number, city, county, state and zip code of an employee's or applicant's residence

ADMINISTRATIVE LEAVE - leave, with or without pay, that may be granted to employees by the Director for any type of leave that is not otherwise covered under these rules

AFFIRMATIVE ACTION PLAN - a plan for increasing representation by protected groups where their numbers among employees in the Department are lower than their availability in the local labor market

APPLICANT - an individual who has applied or is applying for employment or promotion with the Department

APPOINTMENT - official designation of an applicant to a particular position, whether entrance or promotional

BENEFIT BOARD (Metropolitan Employee Benefit Board) - the Metropolitan agency that is created to administer, manage, and coordinate the employee benefit plans of the Metropolitan Government including the retirement plans

BENEFITS - those rights and privileges provided for under these rules (health, dental, and life insurance; pension; etc. benefits are not included in this definition of benefits because they are under the jurisdiction of the Benefit Board)

BOARD OF HEALTH (Metropolitan Board of Health) - the Board authorized by the Metropolitan Charter to administer and control public health for the Metropolitan Government and to serve as a Civil Service Board for Metro Public Health Department employees; also known as the "Board"

CIVIL SERVICE EMPLOYEE - all full-time and part-time (50% or more) employees of the Metro Public Health Department who successfully complete a probationary period with the exception of the Director of Health

CLASSIFICATION (or class) - a group of positions which are similar in duties and responsibilities, require the same education and experience, can be filled by substantially the same tests of ability or selection methods and are of a similar level of job worth; positions in the same classification are given the same title and assigned the same salary grade

CLASSIFICATION SERIES - a group of classifications which are of different levels, but are all engaged in the same type of work

COMPENSATORY TIME - paid leave time credited to an employee in lieu of overtime pay when he/she is required by his/her supervisor to work more hours than his/her officially established work week

CONTINUOUS SERVICE - the continuous employment time accumulated by an employee of the Department; breaks in service and leave without pay exceeding the annual cumulative limit shall be deducted from the employee's total length of service

CONTRACTUAL EMPLOYEE - any employee hired with a specified agreement as to position, date of hire, and rate of pay; these employees are independent contractors and not subject to the Civil Service Rules and Regulations

DEMOTION - a regular or temporary change of classification and/or compensation of an employee as a result of disciplinary action from a position in one class to a position in another class having less responsibility and lower level of compensation or a reduction in salary to a lower step in the same classification

DIRECTOR OF HEALTH - the chief administrative officer of the Metro Public Health Department appointed by the Board of Health in accordance with provisions of the Metropolitan Charter; also known as the Chief Medical Director, Appointing Authority, or the "Director"

DISCIPLINARY ACTION - an action which may be recommended by an employee's supervisor and taken by the Director or the Board when an employee fails to follow any rules, policies or procedures of the Department, including those of the employee's respective division or program, and/or the Rules and Regulations of the Board; the types of disciplinary actions are: suspension, demotion and dismissal

DISMISSAL - a type of disciplinary action which separates an employee from the Department payroll for cause

EXAMINATION - any selection tool, process, or combination thereof which is used to identify and/or measure the qualifications of a job applicant for a specific classification

EXEMPT EMPLOYEE - employees not subject to the overtime requirements of the Fair Labor Standards Act (FLSA) because they perform the duties of a classification determined not to be covered under the act

INJURY LEAVE (OCCUPATIONAL DISABILITY) - the paid leave which is granted to an employee who is injured by an accident or develops an occupational illness in the course of his/her employment with the Department

INTERVIEW - a personal, face-to-face conversation with an applicant in which a series of questions are asked to help determine an applicant's suitability for a position

JOB DESCRIPTION - a written description of a classification describing the typical duties, responsibilities, and minimum qualifications required for that classification

JOB OPEN NOTICE (POSTING) - formal notice by the Human Resources Division that applications will be accepted during a designated period for a particular budgeted vacancy; this includes electronic and hard copy format

LATERAL CLASSIFICATION - a classification having the same or equivalent salary grade as the classification currently held by an employee

LAYOFF - termination of employment resulting from lack of funds or work, abolition of position(s) or reorganization

LEAVE OF ABSENCE - an excused absence of an employee for a period of time during which he/she retains the right to return to his/her position

LEAVE WITHOUT PAY - any time away from work for which an employee receives no compensation

MEDICAL PROVIDER - any licensed doctor, dentist or other recognized practitioner of medical and health care services

NEPOTISM - the employment of relatives within a department and/or any favoritism shown to relatives by reason of relationship rather than merit

NON-EXEMPT EMPLOYEE - employees subject to the overtime requirements of the Fair Labor Standards Act (FLSA) because they perform duties of a classification determined to be covered under the act

POLICY - a statement that clarifies a rule or defines a practice

PROBATIONARY PERIOD - the designated period of time when a person is first appointed to a Department position for the employee to demonstrate his/her fitness for the position

PROMOTION - the assignment of an employee from a position in one classification to a position in another classification having a higher salary grade and additional responsibilities

RECALL - the return to employment of a person from a layoff list

RECLASSIFICATION - the reassignment of a position to a more appropriate classification in order to properly reflect the function of the position

REEMPLOYMENT - the return of a former employee who is credited with his/her past service time

REHIRE - the return of a former employee who is not credited with his/her past service time

RESIDENT ALIEN - any person who is not a United States citizen but possesses an alien registration card or other immigration papers authorizing permanent residency in this country and entitlement to work

RESIGNATION - separation of employment from the Department initiated by the employee

ROLLBACK - reduction in pay, either within the pay range or to a classification with a lower pay range, in lieu of a layoff

SENIORITY - total years and months of continuous employment with the Department, less any periods of layoff of any duration and/or any period of leave without pay in excess of twenty (20) cumulative workdays per calendar year

SERVICE AWARD - an award presented to an employee in recognition of a period of continuous service rendered to the Department

SICK LEAVE - an approved absence due to non-occupational illness or injury for which compensation is received

SUPERVISOR - an employee who has authority and responsibility for planning, directing, scheduling and/or assigning the work of other employees and whose recommendations enter materially into final decisions concerning the hiring, evaluating and disciplining of other employees

TERMINATION - the separation of an employee from the Department payroll

TOP-LEVEL MANAGEMENT - employees in classifications designated on the job description as ineligible for overtime or compensatory time off; these include, but are not limited to Department Directors and Assistant Directors

TRANSFER - the change of an employee from one position to another position in another organizational unit of the Department or another department of the Metropolitan Government

VACANCY - a position funded in a department's budget to which no person is currently appointed

WORK TEST - a specified period of time during which an employee is required to demonstrate his/her suitability for a promotion

APPENDIX 1

AMENDED EXECUTIVE ORDER NO. 91-07 (Revised)

Subject: Financial and other disclosures by certain Metropolitan Government employees and officials.

I, Philip Bredesen, Mayor of the Metropolitan Government of Nashville and Davidson County, by virtue of the power and authority vested in me, do hereby direct and order that:

- 1** Each Metropolitan government employee or official holding a position listed on Attachment A to this order shall annually disclose the following information:
 - (i)** The name and address of the business, and the nature of the employee's interest in any business, in which the individual or spouse, or child of the individual has a financial interest exceeding 5%.
 - (ii)** The address of and nature of interest in any real property in which the individual, or the spouse or child of the individual has a financial interest exceeding 5%, excepting the primary personal residences of those individuals.
 - (iii)** Any non-Metropolitan Government position held, whether compensated or not, in any business entity, non-profit organization, labor group, educational or other institution, together with the nature and amount of any compensation, if applicable;
 - (iv)** Any litigation involving Metropolitan Government, or any entity with a relationship to Metropolitan Government, in which the person is a party or has a financial interest;
 - (v)** Any felony conviction within 20 years of the date of disclosure;
 - (vi)** Any debts, guarantees or endorsement of debts aggregating over \$5,000 owed to one creditor at any time during the year, excluding loans from established financial institutions made in the ordinary course of business on usual and customary terms, and liabilities owed to a relative.
 - (vii)** Any debts of the employee, or a spouse or child of the employee, which are secured by a guarantee or collateral of any individual other than the employee, or a parent, spouse, or child of the employee.
 - (viii)** The individual's Form 1040 Federal Income Tax return for the previous year, or a statement in the form of Attachment B describing the individual's sources of income for the portion of the prior year for which he/she is an employee of Metropolitan government.

- 2 In addition, each person required to report shall annually sign a conflict of interest statement in a form approved by the Director of Law stating that he/she knows of no actual or potential conflict of interest with his/her duties respecting Metropolitan government, or listing and describing any circumstances which might constitute a conflict.
- 3 The Internal Auditor shall prepare forms to be used by each person required to report, and shall provide those forms to each individual prior to July 1st of each year. Such statements shall be filed with the Internal Auditor by July 15th of each year together with the income statements required in paragraph 1 (viii) above, except income statements for calendar year 1991 are not required to be filed with the disclosures filed for July 15, 1992, since they had previously been filed. Thus, income statements must accompany disclosure forms for filings made July 15, 1993 and thereafter.
- 4 Each person required to report shall notify the Internal Auditor by letter of any substantial change in circumstance during the course of the year which may present a potential or actual conflict of interest with his/her duties as an employee or official of Metropolitan Government.
- 5 The Internal Auditor shall maintain files of such disclosures and conflict of interest statements, and shall make them available for inspection by the public during normal working hours. The Internal Auditor shall file such disclosures and conflict of interest statements with the Metropolitan Clerk to the extent required by law.
- 6 This order supersedes and repeals Executive Order 88-10, Integrity in Government and Financial Disclosures by certain Metro employees.

**ORDERED THIS 24TH DAY OF
JUNE 1994**

**Philip Bredesen
Mayor**

ATTACHMENT A

POSITIONS COVERED

Metropolitan Board of Health

Chief Medical Director

Deputy Director of Health

All members of the Executive Management Team (EMT)

Food Inspection Director

Food Inspector 3

Food Inspector 2

Food Inspector 1

Vehicle Inspection Director

Vehicle Inspector 2

Vehicle Inspector 1

Environmental Engineer 3

Environmental Engineer 2

Environmental Engineer 1

Soil Scientist

Environmental Engineer Assistant 2

Environmental Engineer Assistant 1

Environmental 4

Environmental 3

Environmental 2

Environmental 1

ATTACHMENT B

ALTERNATIVE TO IRS FORM 1040

In lieu of filing Federal Income Tax Form 1040, the Metropolitan Government employees required to file under Executive Order 91-07 may submit the following information:

- 1** NAME:
- 2** ADDRESS:
- 3** TITLE OF OFFICE:
- 4** Amount of employee's taxable income as reflected on Internal Revenue Service Forms W-2, 1099, and K-1...\$_____
- 5** Amount of income derived from real property in Davidson County, other than a primary personal residence, which has been subject to administrative or legislative action by Metropolitan Government.
(Income shall include rents, capital gains or losses or capital gains distribution).....\$_____
- 6** Amount of income received from positions listed in Item 1 (iii) of Executive Order 91-07 requiring a list of all non-governmental positions held in a business entity, organization, group or other institution.....\$_____
—

Signature

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary Public

My commission expires _____.

APPENDIX 2

AMENDED EXECUTIVE ORDER NO. 91-08

Subject: Ethics, conflicts of interest, and acceptance of gifts on the part of employees of Metropolitan Government.

WHEREAS, the maintenance of high standards of honesty, integrity, impartiality, and conduct by employees and agents of Metropolitan Government is essential to ensure the proper performance of government business and the maintenance of confidence by citizens in their government; and

WHEREAS, the avoidance of misconduct and conflicts of interest on the part of employees of Metropolitan Government is indispensable to the maintenance of these standards;

NOW THEREFORE, I, Philip Bredesen, Mayor of the Metropolitan Government of Nashville and Davidson County, by virtue of the power and authority vested in me, do hereby direct and order the following:

- 1 Employee responsibilities.** Each employee of Metropolitan Government shall avoid any action, whether or not specifically prohibited by this order or departmental codes of ethics, which might result in, or create the appearance of:
 - (i) using public office for private gain;
 - (ii) giving preferential treatment to any person;
 - (iii)impeding government efficiency or economy;
 - (iv)losing complete independence or impartiality;
 - (v) making a Metropolitan government decision outside of official channels; or
 - (vi)affecting adversely the confidence of the public in the integrity of the government.
- 2 Persons covered.** This Executive Order applies to all employees of Metropolitan Government except: employees of the Board of Education, Nashville Electric Service, Metropolitan Nashville Airport Authority, Metropolitan Development and Housing Agency, and elected officials and their employees.
- 3 Mayor's office covered.** This order applies to the Mayor and employees of the Mayor's office.
- 4 Gifts, entertainment and favors.** No employee shall solicit or accept, directly or indirectly, on behalf of himself/herself, or any member of the employee's household, any gift, gratuity, service, favor,

entertainment, lodging, transportation, loan, loan guarantee or any other thing of monetary value from any person who:

- (i) has, or is seeking to obtain, contractual or other business or financial relations with the department or agency of Metropolitan Government by which the individual is employed; or
- (ii) conducts operations or activities that are regulated by the department or agency of Metropolitan Government by which the employee is employed; or
- (iii) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

5 Exceptions: gifts, entertainment and favors. The prohibitions on accepting gifts, entertainment or favors in (4) do not apply to:

- (i) family members or friends of long standing when the circumstances make it clear that it is the relationship, rather than the business of the persons concerned, which is the motivating factor, and where the value of the gift, entertainment or favor is appropriate to the circumstances and consistent with the parties' historical relationship. If such gift, entertainment or favor exceeds \$100 in value, the employee shall disclose the nature and value of the gift, entertainment or favor in a letter to the Internal Auditor.
- (ii) loans from established financial institutions made in the ordinary course of business on usual and customary terms, so long as there are no guarantees or collateral provided by any person described in (4);
- (iii) unsolicited advertising material of nominal value;
- (iv) food and refreshments of nominal value when they are part of the employee's participation in a charitable, civic, political or community event which bears a relationship to the employee's office and the employee is attending in an official capacity. A business lunch or dinner is not an "event" for the purposes of this exception. On those occasions, the employee must buy his/her own meal or refreshment. If the meal is held at a private club where the employee may not pay the establishment directly, the employee must reimburse the member of the establishment for the equivalent cost of the meal or refreshment.

6 Financial Interests.

- (i) No employee of Metropolitan Government shall enter into or derive any benefit, directly or indirectly, from any contractual arrangement with the Metropolitan Government or any of its agencies. In recognition of the fact that many husbands and wives have separate careers, the normal employment compensation of a spouse whose regular, ongoing employer or business has a contractual arrangement with Metropolitan Government shall not be

considered a “benefit” to the Metro employee, provided the contract with Metropolitan Government was procured without any participation, assistance or influence by the Metro employee.

(ii) No employee of Metropolitan Government shall have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his/her government duties or responsibilities. “Indirect financial interest” in this case includes a substantial interest on the part of a parent, spouse, or child of the employee.

7 Use of Information. No employee of Metropolitan Government shall, directly or indirectly:

(i) use, disclose, or allow the use of official information which was obtained through or in connection with his/her government employment, and which has not been made available to the general public, for the purpose of furthering the private interest or personal profit of any person, including the employee; or

(ii) engage in a financial transaction as a result of, or primarily relying upon, information obtained through his/her government employment.

8 Use of government property. No employee shall use the facilities, equipment, personnel, or supplies of Metropolitan government or its agencies for other than officially approved activities, except to the extent that they are lawfully available to the general public.

9 Questions on interpretation of this order. When an employee is in doubt as to the proper interpretation of this order, he/she is expected to seek the advice of the applicable Department Head or the Internal Auditor if time permits, or to use good judgment in accordance with (1) above and to report the gift, entertainment or favor to the Internal Auditor within 7 (seven) days.

10 Departmental ethics standards. Any department or agency of Metropolitan government may establish such additional ethics guidelines and standards as may be lawfully applied and may in the opinion of the head of the department or agency be appropriate for the proper operation of the department. Such additional standards should be filed with the Internal Auditor and any other person required by law as soon as practicable after adoption.

This Executive Order does not supersede or revoke those portions of any existing departmental or agency policies regarding ethical standards which are stricter than, or cover areas additional to, the standards set out herein.

- 11 Ethics guidelines published by Personnel Director.** The personnel director is requested, with the permission of the Civil Service Commission, and Hospital and Health Boards and their Civil Service Commissions, to inform each covered employee of the requirements of this order, to distribute the order to covered employees and have them sign a statement that they have received and read it, and to modify personnel manuals to incorporate these standards as soon as practicable.
- 12 Supervisors responsible.** Each employee of Metropolitan Government who acts in a supervisory capacity is responsible for ensuring compliance with the Executive Order by those persons in his/her line of authority.
- 13 Required contractual provision.** Department Heads and others who approve contracts for their departments shall include in every employment contract the provision that employees provided to Metropolitan Government under such contract are covered by this Executive Order.
- 14 Effective date.** This amended order shall become effective 18 November 1991.

**ORDERED THIS 18TH DAY OF
NOVEMBER 1991**

**Philip Bredesen
Mayor**

APPENDIX 3

Subject: The Family and Medical Leave Act of 1993

The Family and Medical Leave Act of 1993 (FMLA) was enacted on February 5, 1993.

The new law is effective on August 5, 1993 for most employers. If a collective bargaining agreement (CBA) is in effect on that date, the Act becomes effective on the expiration date of the CBA or February 5, 1994, whichever is earlier.

The U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, administers and enforces FMLA for all private, state and local government employees, and some federal employees.

FMLA entitles eligible employees to take up to twelve (12) weeks of unpaid, job-protected leave each year for specified family and medical reasons. An eligible employee's right to FMLA leave begins on August 5, 1993; any leave taken before that date does not count as FMLA leave.

The law contains provisions on employer coverage; employee eligibility for the law's benefits; entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; notice and certification of the need for FMLA leave; and, protection for employees who request or take FMLA leave. The law also requires employers to keep certain records.

Employer Coverage

FMLA applies to all:

1. Public agencies, including state, local and federal employers, local education agencies (schools) and
2. Private-sector employers who employed fifty (50) or more employees in twenty (20) or more workweeks in the current or preceding calendar year and who are engaged in commerce or in any industry or activity affecting commerce - including joint employers and successors of covered employers.

Employee Eligibility

To be eligible for FMLA benefits, an employee must:

1. Work for a covered employer;
2. Have worked for the employer for a total of at least twelve (12) months;
3. Have worked at least twelve hundred and fifty (1,250) hours over the previous twelve (12) months; and
4. Work at a location where at least fifty (50) employees are employed by the employer within seventy-five (75) miles.

Most federal and certain congressional employees are also covered by the law and are subject to the jurisdiction of the U.S. Office of Personnel Management and the Congress.

Leave Entitlement

A covered employer must grant an eligible employee up to a total of twelve (12) workweeks of unpaid leave during any twelve (12) month period for one (1) or more of the following reasons:

1. For the birth or placement of a child for adoption or foster care;
2. To care for an immediate family member (spouse, child, or parent) with a serious health condition; or
3. To take medical leave when the employee is unable to work because of a serious health condition.

Spouses employed by the same employer are jointly entitled to a combined total of twelve (12) workweeks of family leave for the birth or placement of a child for adoption or foster care, and to care for a parent (but not a parent-in-law) who has a serious health condition.

Leave for birth or placement for adoption or foster care must conclude within twelve (12) months of the birth or placement.

Under some circumstances, employees may take FMLA leave intermittently - which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule.

1. If FMLA leave is for birth or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.
2. FMLA leave may be taken intermittently whenever medically necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

Also, subject to certain conditions, employees or employers may choose to use accrued paid leave (such as sick or vacation leave) to cover some or all of the FMLA leave. The employer is responsible for designating if an employee's use of paid leave counts as FMLA leave, based on information from the employee. In no case can use of paid leave be credited as FMLA leave after the leave has ended.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

1. Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility;
2. Any period of incapacity requiring absence of more than three (3) calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
3. Continuing treatment by (or under the supervision of) a health care provider for a chronic or long term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three (3) calendar days, and for prenatal care.

“Health Care Provider” Means:

1. Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices; or
2. Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; or,
3. Nurse practitioners and nurse-midwives authorized to practice, and performing within the scope of their practice, as defined under state law; or
4. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

Maintenance of Health Benefits

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave.

In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

Job Restoration

Upon return from FMLA leave, an employee must be restored to his/her original job, or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions.

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave.

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, an employer may refuse to reinstate certain highly-paid “key” employees after using FMLA leave during while health coverage was maintained. In order to do so, the employer must:

1. Notify the employee of his/her status as a “key” employee in response to the employee's notice of intent to take FMLA leave;
2. Notify the employee as soon as the employer decides it will deny job restoration and explain the reasons for this decision;
3. Offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; and
4. Make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration.

A “key” employee is a salaried “eligible” employee who is among the highest paid ten (10) percent of employees within seventy-five (75) miles of the work site.

Notice and Certification

Employees seeking to use FMLA may be required to provide:

1. Thirty (30) day advance notice of the need to take FMLA leave when the need is foreseeable;
2. Medical certifications supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;
3. Second or third medical opinions and periodic recertification (at the employer’s expense); and
4. Periodic reports during FMLA leave regarding the employee’s status and intent to return to work.

When leave is needed to care for an immediate family member or the employee’s own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt the employer’s operation.

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. An employer that willfully violates this posting requirement may be subject to a fine of up to \$100 for each separate offense.

Also, covered employers must inform employees of their rights and responsibilities under FMLA, including giving specific information when an employee gives notice of FMLA leave on what is required of the employee and what might happen in certain circumstances, such as if the employee fails to return to work after FMLA leave.

Unlawful Acts

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

Enforcement

FMLA is enforced, including investigation of complaints, by the U.S. Labor Department’s Employment Standards Administration, Wage and Hour Division. If violations cannot be satisfactorily resolved, the Department may bring action in court to compel compliance. An eligible employee may also bring a private civil action against an employer for violations.

Other Provisions

Special rules apply to employees of local education agencies. Generally, these rules provide for FMLA leave to be taken in blocks of time when intermittent leave is needed or the leave is required near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to "eligible" employees' use of leave required by FMLA.

The FMLA does not affect any other federal or state law which prohibits discrimination, or supersede any state or local law which provides greater family or medical leave protection. Nor does it affect an employer's obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan. The FMLA also encourages employers to provide more generous leave rights.

Further Information

For more information, please contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration.

APPENDIX 4

Subject: The Tennessee Maternity Leave Law

Following is the text of the Tennessee maternity leave law, providing that employers of one hundred (100) or more full-time employees must provide up to four (4) months' paid or unpaid leave to female workers upon the birth of a child. Codified at Title 4, Ch. 21, Sections 408 et aux., Tennessee Code Annotated, the law reads as amended by Ch. 430 L. 1991, effective May 22, 1991.

SEC. 4-21-408. MATERNITY LEAVE

A female employee who has been employed by the same employer for at least twelve (12) months as a full-time employee, as determined by the employer at the job site or location, may be absent from such employment for a period not to exceed four (4) months for pregnancy, childbirth, and nursing the infant, where applicable (such period to be hereinafter referred to as "maternity leave").

A female employee who gives at least three (3) months advance notice to her employer of her anticipated date of departure for maternity leave, her length of maternity leave, and her intention to return to full-time employment after maternity leave, shall be restored to her previous or a similar position with the same status, pay, length of service credit and seniority, wherever applicable, as of the date of her leave.

A female employee who is prevented from giving three (3) months advance notice because of a medical emergency which necessitates that maternity leave begin earlier than originally anticipated shall not forfeit her rights and benefits under this section solely because of her failure to give three (3) months advance notice.

Maternity leave may be with or without pay at the discretion of the employer. Maternity leave shall not affect the employee's right to receive vacation time, sick leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs for which she was eligible at the date of her leave, and any other benefits or rights of her employment incident to her employment position; provided, that the employer need not provide for the cost of any benefits, plans or programs during the period of maternity leave unless such employer so provides for all employees on leaves of absence.

If an employee's job position is so unique that the employer cannot, after reasonable efforts, fill that position temporarily, then the employer shall not be liable under this section for failure to reinstate the employee at the end of her maternity leave period.

The purpose of this section is to provide leave time to female employees for pregnancy, childbirth, and nursing the infant, where applicable; therefore, if an employer finds that the female employee has utilized the period of maternity leave to actively pursue other employment opportunities or if the employer finds that the employee has worked part-time or full-time for another employer during

the period of maternity leave, then the employer shall not be liable under this section for failure to reinstate the employee at the end of her maternity leave.

Whenever the employer shall determine that the employee will not be reinstated at the end of her maternity leave because her position cannot be filled temporarily or because she has used maternity leave to pursue employment opportunities or to work for another employer, the employer shall so notify the employee.

Nothing contained within the provisions of this section shall be construed to:

Affect any bargaining agreement or company policy which provides for greater or additional benefits than those required under this section;

Require any employer to provide maternity leave to male employees; or

Apply to any employer who employs fewer than one hundred (100) full-time employees on a permanent basis at the job site or location.

Diminish or restrict the rights of teachers to leave for maternity pursuant to title 49, chapter 5, part 7, or to return for reinstatement after leave.

The provisions of this section shall be included in the next employee handbook published by the employer after passage of this section.